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TO THE

## REPORTS OF COMMITTEES

OF THE

### HOUSE OF REPRESENTATIVES

FOR THE

FIRST AND SECOND SESSIONS OF THE FORTY-SIXTH CONGRESS,

1879-'80.

IN SIX VOLUMES.

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Mr. O. R. SINGLETON, from the Committee on Printing, submitted the following

REPORT:

[To accompany bill H. R. 2657.]

The Committee on Printing, to whom was referred the bill (H. R. 2657) to prohibit the reporting or publication at the public expense of the debates of Congress, having considered the same, report it back to the House with an adverse recommendation, and ask to be discharged from the further consideration of the subject.

○



PRINTING ADDITIONAL COPIES OF CLARENCE KING'S  
REPORTS.

MARCH 19, 1880.—Laid on the table and ordered to be printed.

Mr. O. R. SINGLETON, from the Committee on Printing, submitted the  
following

REPORT:

[To accompany H. Res. 50.]

*The Committee on Printing, to whom was referred the joint resolution (H. Res. 50) providing for the printing of 1,200 copies of the reports of Clarence King, having had the same under consideration, beg leave to submit thereon the following report:*

These reports were published under the direction of the War Department, and are the surveys of the fortieth parallel. They comprise six volumes and two atlases. Two thousand copies have heretofore been printed by authority of Congress (Stat. at L., vol. 15, p. 318), on requisition from the War Department. The cost of the republication will be as follows:

For volume I .....	\$5, 025 90
For volume II .....	3, 371 18
For volume III .....	3, 322 88
For volume IV .....	2, 520 97
For volume V .....	2, 520 97
For volume VI .....	2, 520 97
For atlas to accompany volume I (unbound).....	11, 062 50
For atlas to accompany volume III (unbound).....	2, 797 50

Making a total cost of..... 33, 142 87

In view of this large expense, and the fact that the publication is not by any means absolutely necessary, your committee report back the joint resolution with an adverse recommendation, and ask to be discharged from the further consideration of the subject.





ADDITIONAL COPIES OF PROFESSOR RILEY'S GRASS-  
HOPPER REPORT.

MARCH 19, 1880.—Laid on the table and ordered to be printed.

Mr. O. R. SINGLETON, from the Committee on Printing, made the following

R E P O R T :

*The Committee on Printing, to whom was referred the letter from the Secretary of the Interior inclosing a communication from Prof. C. V. Riley, chief of the United States Entomological Commission, recommending the publication of an edition of 30,000 copies of his report upon grasshoppers, having had the same under consideration, beg leave to submit thereon the following report :*

At the second session of the Forty-fifth Congress an edition of 5,000 copies of the report under consideration was ordered to be printed, and this has been distributed by members of Congress and, in part, by the commission. The legitimate demands for the work have been supplied, and the republication asked for in the letter of the Secretary would entail an unnecessary expense of \$14,609.59. This, too, at a time when the Public Printer has informed Congress that the appropriations for current work in his office are upon the point of exhaustion.

Your committee, in view of these facts, respectfully report back adversely the letter of the Secretary, with the inclosures, and ask to be discharged from the further consideration of the subject.



PUBLICATION OF PROCEEDINGS OF CONGRESS IN NEWS-  
PAPERS.

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MARCH 19, 1880.—Laid on the table and ordered to be printed.

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Mr. O. R. SINGLETON, from the Committee on Printing, submitted the  
following

REPORT :

The Committee on Printing, to whom were referred seven petitions from citizens of the State of New York, asking that the proceedings of Congress be printed in newspaper form to be sent, free of charge, to every family in the United States, have considered the same, and report thereon that although they have not been able to obtain from the Public Printer an estimate in regard to the probable cost of such a publication, they feel assured that it would cause an immense outlay of the public moneys, aggregating hundreds of millions of dollars annually. They therefore report back said petitions adversely and ask to be discharged from the further consideration of the subject.



## HEIRS OF HENRY M. SHREVE.

MARCH 19, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. L. H. DAVIS, from the Committee on Claims, submitted the following

### REPORT:

[To accompany bill H. R. 2477.]

*The Committee on Claims, to whom was referred the bill (H. R. 2477) for the relief of the heirs of Henry M. Shreve, have carefully examined the bill and accompanying papers, and submit the following report:*

June 5, 1834, Mr. Ashley, from the Committee on the Public Lands, first session of the Twenty-third Congress, reported—

That it appears from official reports and other information in possession of the committee, that the petitioner, Henry M. Shreve, is the inventor of the snag steamboat; that it was contrived and constructed expressly for the purpose of removing snags and rocks from, and improving the navigation of, the principal rivers of the valley of the Mississippi; that it has been tested by the experience of five years, and minutely examined and approved of by some of the most experienced officers of the Corps of Engineers. Captain Delafield, of that department, describes it as a splendid piece of machinery, the power of which is such as to raise the largest and most firmly planted snags; he states that one snag raised by the Heliopolis, while he was on board, contained sixteen hundred cubic feet of timber, and could not have weighed less than sixty tons. The first snag-boat was constructed in 1829, the second in the year 1831, and the success with which they have been employed in improving the navigation of the Mississippi, Ohio, Arkansas, and Red Rivers, is so fully tested by reports made to the chief engineer, that the committee are constrained to view the invention as one of great importance to the government. It is a labor-saving agent of immense power, by the aid of which the petitioner has recently demonstrated by actual experiment that the great Red River raft may be speedily removed and demolished. When this great work shall be accomplished, the navigation will be as good through what is termed the line of the raft as it ever has been below it, and the river may be ascended by steamboats of the first class upwards of eleven hundred miles. In a military point of view, the improvement of the navigation of Red River may be pronounced a work of great importance.

March 3, 1836, Mr. Dunlap, from the same committee, Twenty-fourth Congress, first session, reported favorably a bill for the relief of Henry M. Shreve, an extract of which is as follows:

The destruction of the Red River raft will add some eight or ten millions to the value of the public domain on the waters of Red River, and eventually be productive of incalculable agricultural and commercial advantages.

This is an imperfect view of the general advantages which must follow the removal of the great raft, a work which the committee believe could not have been commenced with a prospect of success without the aid of the snag-boat and the energy and skill of the inventor. Other improvements have been made and are in progress in which the snag-boat has proved itself a valuable and, the committee may say, an indispensable agent. Although the commerce of the Mississippi and Ohio Rivers has increased about one hundred per cent. since 1829, the losses on those rivers have not exceeded, in the last five years, one-third of the aggregate amount of those sustained in the five years immediately preceding. Similar results must follow the improvement of the

Red River, the Missouri, Upper Mississippi, Arkansas, and all their numerous tributaries navigable for steamboats, and, in the course of these operations, many millions of acres of valuable lands will be reclaimed, thereby contributing largely to the national Treasury, as well as to the health and convenience of the adjacent country.

February 28, 1843, Mr. Cross, from the select committee, Twenty-seventh Congress, third session, to which the subject for the relief of Henry M. Shreve, and to authorize the purchase of his patent for a snag-boat, was referred, asked leave to report:

That, with a view to meet fully the object of the recommitment, they have carefully examined the memorial and evidence upon which the bill is founded, and can perceive no reason to doubt the correctness of the report heretofore made in any of its material statements or views. The subject, however, to which the committee directed its attention more particularly, was an inquiry as to the claim of the memorialist to originality as inventor of the plan upon which the snag-boat has been constructed, regarding this as the principal object of the recommitment. In prosecuting the inquiry, copies of the letters patent, with specifications of the plan of construction, and such other plans as could be ascertained, believed to be analogous in design, were procured and submitted to the Commissioner of Patents and the chief of the Bureau of Topographical Engineers, with a request to each that he would cause the same to be compared and the difference, if any, carefully pointed out and explained. From the respective answers of these officers to the call thus made (which answers are hereto appended and made part of this report), it appears that, so far as other ascertained or known plans are concerned, the claim of the memorialist to originality as inventor of the snag-boat is clear and well founded.

Of the utility, and, indeed, indispensable necessity for the use of the snag-boat in improving the navigation of rivers, it is deemed unnecessary to add anything to what has been said in a former report. Early and definitive action on the bill is believed to be essential to the interest of the government, on the ground that it cannot reasonably be expected that the memorialist, with an unquestioned claim to originality of invention, combined with the legal right "of making, constructing, using and vending to others to be used, the said improvement," will submit to its use by the government or private individuals, without an effort to maintain the rights secured to him by the terms of his patent. (In resisting an invasion of his patent, awarded more than four years since, there would seem to be no just cause of complaint on the part of the government or individuals, as he has been urging, and still urges, its purchase upon Congress. By the terms of the patent, it will be perceived that his exclusive right to construct, use, and vend, has still nearly ten years to run.) If, therefore, the claim of indemnity for the use of boats constructed on his plan and under his superintendence, when in the employ of the government, be considered doubtful, it will be otherwise as to those of subsequent construction, or that may be hereafter required. Under a conviction that both policy and justice require the purchase, the committee beg leave to submit the bill as heretofore reported, with a recommendation that it be speedily acted upon. \* \* \*

June 7, 1844, Mr. Wright, from the select committee, Twenty-eighth Congress, first session, to which was referred the memorial of Henry M. Shreve, praying for indemnity for the past use, and the purchase by the United States of the right to use the snag-boat, reported:

\* \* \* The important improvements effected through its agency, in the navigation of the Mississippi, Ohio, Arkansas, Red, and other rivers, are of public notoriety. It appears from a statement made by twelve steamboat captains and other citizens of Louisville, Ky., presented to the House of Representatives, in 1830, that in the brief space of seven months after the first boat commenced her operations, "some of the very worst channels of the Mississippi," were "rendered safe and easy"; and that Plum Point, and islands Nos. 62 and 63, previously considered the most dangerous passes of that river, presented the appearance of smooth sheets of water, and could "be traversed with perfect safety." Subsequently, and still prior to the date of the patent, the great raft of Red River, consisting of an accumulation of trees, logs, and driftwood of every description, firmly imbedded in its channel for more than one hundred and sixty miles, was removed, and the navigation of that river opened, inclusive of the raft, a distance of nearly twelve hundred miles. This work alone, on account of the immense quantity of the public land reclaimed in the raft region, and rendered fit for cultivation, the enhanced value of other lands on the upper part of the river, and the reduced cost in the transportation of supplies to Fort Towson and to the Indians located in that neighborhood, has been worth millions to the government. The other improvements effected within the same period, through the agency of the invention, in the Ohio, Mississippi, Arkansas, and Cumberland Rivers, are of great importance in a commercial and military point of view, and fully appear from

official reports and documents hereto appended, and made part of this report. Under such circumstances, the committee, leaving out of view entirely the rights of the memorialist as secured by his patent, and resting the claim to compensation upon the magnitude of the service rendered, together with precedent in like cases, regard an appropriation for that purpose as being due, upon principles both of policy and justice. \* \* \*

The great value of this invention seems to be established as conclusively as any fact can be by human testimony. The great benefits to the government and country resulting from its use are manifest. A general view of them may be obtained from a brief summary.

1. Red River was blocked up by a compact mass of driftwood, 160 miles in extent, called the "great raft," consisting of "huge logs for centuries imbedded together, and covered with living trees," which not only prevented all navigation, but caused the overflow of a large body of the best lands in the world, to the right and left, for a considerable distance up the river. To remove this raft by any means known before this invention was a hopeless undertaking. With its aid the whole raft was removed and destroyed, the river restored to its original bed, hundreds of thousands of acres of lands drained and made valuable, and many hundred miles of navigation opened to steamboats from the Mississippi.

2. By the removal of snags in the great western rivers generally, the dangers of navigation to life and property have been incalculably diminished, and the time occupied in performing voyages between the interior cities and New Orleans reduced about one-half. Hence results a saving of life, of property, of time, and of freights, increasing the value of produce throughout the entire West, and enhancing the value of lands and other real property, public and private, beyond calculation.

3. It is in evidence, from the annual report of the Secretary of War in 1840, that the removal of the great raft in Red River caused a saving every year, in the transportation of the supplies for the troops at Fort Towson, of \$85,000; and the snagboats, by the removal of obstructions, have saved, and will save to the government, immense sums in transportation, not only on that but the other great western rivers.

That the patentee was himself superintendent for a portion of the time of public works, in the prosecution of which his invention was used with so much success and advantage, cannot destroy his right to indemnity. In an analogous case, Congress does not seem to have regarded the circumstance that an inventor was, at the time of the invention, in the employ of the government and in the receipt of a stated salary. It will be seen that in the year 1836 an act was passed authorizing the Secretary of the Treasury to pay to Capt. William H. Bell, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars, upon his transfer and conveyance to the United States of "all his right, interest, and title in and to two certain patents, viz, one called a machine for elevating heavy cannon, the other called a traverse board for pointing cannon." These machines were invented, as it appears, at a time when Captain Bell was an officer of the Ordnance Corps of the United States Army, and were tested at the expense of the government.

There have been *eight formal recognitions by United States authorities* of Captain Shreve's right to his invention and patent, viz, first, by the Committee on the Public Lands of the House of Representatives, on June 5, 1834; second, by the Committee on the Public Lands of the House of Representatives, on March 3, 1836; third, by a committee of the House of Representatives, on April 12, 1842; fourth, by a committee of the Senate, on ———, 1842; fifth, by a committee of the House of Representatives, on February 28, 1843; sixth, by a report from the Engineer Department, on his right to a patent, on February 19, 1843; seventh, by a report from the Topographical Bureau, on his right to his patent, on February 23, 1843; eighth, by a report from the Patent Office, on the subject of his right to his patent, on February 21, 1843. Want of time has prevented action by Congress on said reports. In these numerous decisions every question which could possibly arise in regard to his right to his patent has been considered and decided that he has a clear right to the same. \* \* \* There is ample testimony, from the most distinguished engineers in the United States and other competent judges, that the actual value of the right to use this patent invention by the government is from one hundred thousand to two hundred thousand dollars; and, considering that it has actually saved millions of dollars in the economy of its operations, its actual value is unquestionably great. \* \* \*

The committee herewith report a bill, annexing as a condition that a conveyance of the right to use said patent shall be made to the United States.

February 28, 1846, Mr. Sykes, from the Committee on Patents, to whom was referred the case of Henry M. Shreve, reports:

If, by his inventive powers, a large sum of money has been saved to the Treasury in the accomplishment of important improvements, it is but just that he should be paid for the product of his genius. \* \* \*

The rapid rivers of the West often undermine their banks, and whole acres of forest

are constantly caving in; hence the necessity continues, and ever will continue, for some machine to uproot and extract the trees imbedded in the stream. That of the memorialist has alone proved effectual, and no doubt is entertained by the committee of the propriety of securing it for the government. \* \* \*

After full consideration, your committee have concluded that the least amount proper to be offered for the past use and the future right to this invention is what the Secretary of War has said, in his report of the year 1840, is saved by it to the government in the course of one year, in the expense of transportation of supplies to the single post of Fort Towson, on Red River, to wit, the sum of eighty-five thousand dollars (\$85,000).

Your committee have prepared a bill in conformity with these views, and recommend its passage.

January 4, 1848, Mr. Farrelly, from the Committee on Patents, Thirtieth Congress, first session, to whom was referred the memorial and accompanying papers of Henry M. Shreve, report:

That after a full and impartial investigation, based upon official and other evidence, they find the facts to be substantially as set forth in said memorial. In common with the five previous committees of the House who have investigated the subject they have arrived at the following conclusions: \* \* \*

The use of said invention and patent cannot be dispensed with by the government in the discharge of its duties. The annual value of property afloat on the great western rivers is estimated at \$500,000,000, and during the last year government stores alone to the value of many millions, as well as a large portion of the Army, which has operated in Mexico, have passed along said rivers, the safe and speedy transportation of which was of the utmost moment. It may be correctly said that such safe and speedy transportation as is required cannot be had without the use of the invention and patent of said Shreve. There is ample proof that the said snagboats have already been the means of saving many millions of private property and of benefiting the government directly to the extent of many millions more. There is no other contrivance or invention known which will answer the same purpose, and the nature of the obstructions in said rivers requires the constant use of two or more of said machine-boats for many years to come.

Said Shreve has never received any compensation for the use of his invention and patent by the government. It has used his private property for nearly twenty years, because it was thoroughly convinced of the utility and necessity of employing those machine-boats on western rivers. The concurrent testimony of the War Department, Congressional committees, scientific and practical men, the newspaper press, private and public bodies, several State legislatures, and individual merchants and navigators who have experienced its benefits, leaves no room to doubt that said invention is of too great moment to the government and people to be dispensed with, and justice requires that full payment should be made to the inventor and patentee for the use made of his property for public purposes. \* \* \*

Your committee recommend that the sum of eighty-five thousand dollars be appropriated as compensation to said Henry M. Shreve for the past use of his invention and patent, and for the purchase of the same for future use, and, in conformity with these views, they have prepared a bill and recommend the passage of the same.

The records show that nine favorable reports have been made by committees of the House of Representatives, all of which urge that Henry M. Shreve be compensated by the government for the use of his patent steam snagboat. Through lack of time, the reports failed to be considered by the House.

The first snagboat was put into operation July 22, 1829, since which time the snagboats have been in continuous use by the government to date, without any material modification or improvement. Millions of property and thousands of lives have been saved by the genius and perseverance of Captain Shreve, who possessed a valid patent; and justice requires that full payment should be made for the use of his property for public purposes which is so clearly established has kept the chief rivers of the West and South free from snags, sawyers, &c. These great arteries of trade drain the two watersheds of the continent, between the Alleghany and the Rocky Mountains, a region of country fourteen hundred miles wide and over two thousand miles long, a region capable of producing enough of that on which man lives to feed every



people which may find itself lacking of food. The mighty rivers traversing that tract are national; they are roadways for the products of this region to the outward markets of the world.

The part played by Shreve's snagboats in preparing the roads of our inland commerce gave to our people wealth and the nation greatness, to accomplish which Henry M. Shreve gave his genius and his treasure; these benefits should have a recognition; his heirs should no longer suffer because of a policy of either inaction or illiberality. Shreve won countless triumphs over the mighty waters of the West, and influenced great progress in the commerce of the republic, annually saving millions of dollars to the government and the people.

Your committee are unanimous in opinion that Capt. Henry M. Shreve has been a great benefactor to his country and deserves special recognition. They therefore recommend that the accompanying bill do pass.





KIMBERLY BROTHERS.

MARCH 22, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. KITCHIN, from the Committee on Expenditures in the Navy Department, submitted the following

R E P O R T :

[To accompany bill H. R. 3290.]

*The Committee on Expenditures in the Navy Department, to whom was referred the bill (H. R. 3290) for the relief of Kimberly Brothers, contractors for supplying the Marine Corps with rations, submit the following report :*

Your committee find that the said Kimberly Brothers entered into a contract for supplying the following marine stations with rations for the fiscal year ending June 30, 1880, to wit: Portsmouth, N. H.; Boston, Mass.; New York, N. Y.; Philadelphia, Pa.; Annapolis, Md.; Washington, D. C.; Norfolk, Va.; Mare Island, Cal.

That at the time said contract was made, the cost of a ration was between nine and ten cents, but that owing to the great advance in the cost of the articles entering into the ration since that time, the cost is now, and has been since about the 1st of August, between fifteen and sixteen cents; and that by reason of such advance the said Kimberly Brothers are now performing said contract at a loss of about \$60 or \$70 per day.

Your committee further find that many of the articles entering into the ration could not be purchased in advance; that fresh bread has to be purchased daily, fresh beef the same; and, further, that at the various stations the officers of the United States will in no event receive rations at one time for more than one month, and then such rations have to be stored at the risk of the contractor.

The committee further find that said Kimberly Brothers have made many contracts with the Navy Department, and have always faithfully discharged their obligations to the entire satisfaction of the department, as will be seen by the report of the Secretary of the Navy addressed to your committee upon the subject.

At first your committee were disposed to deny the relief sought; but having patiently and thoroughly examined the evidence submitted and the circumstances of this particular case, and finding also that like relief has been granted by Congress to various other contractors, and believing that it is not the policy of the government to bankrupt honest and faithful contractors, but that, on the contrary, the best way to get rid of the dishonest is to protect the faithful, and finding in this case that Kimberly Brothers have always acted in good faith, and have complied

strictly with the terms of the present contract, although at great loss, your committee, therefore, as the result of a careful and thorough examination, do recommend the passage of said bill.

Your committee beg leave to call the attention of the House to the report of the Secretary of the Navy to this committee, together with the accompanying documents and facts, showing the advance in the prices of the articles to be supplied under said contract.

And they also beg leave to state that the accompanying bill only proposes that the Secretary of the Navy shall examine into the accounts of the said Kimberly Brothers, and do what, under the circumstances, may seem equitable and just to him.

They also view this in part as a misfortune against which no human ingenuity or foresight could anticipate so as to ward it off.

They are fully cognizant of the fact that these contractors have no legal right or claim whatever on their side; but in view of the fact that this contract is unlike all other contracts of the Navy Department in its performance, and the irreproachable character of the contractors, the unusual advance in the price of provisions, and the absence of any opportunity to defraud the government without the aid of the Secretary, we deem it not inappropriate for the government to extend its mercy to one of its citizens, without which he is irredeemably ruined.

The committee therefore recommend the passage of the bill, with the following amendments: Strike out the words "above the contract price," in the third line from the end of the bill, and add to the end thereof the following words: "From time to time until the expiration of the contract."

NAVY DEPARTMENT,  
*Washington, February 16, 1880.*

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, inclosing copy of bill for relief of Kimberly Brothers, and requesting my views upon the same.

The facts as to the making of the contracts by Messrs. Kimberly Brothers to supply rations for the Marine Corps, as represented in the preamble of the bill, are correct, and it is not doubted that since they were entered into there has been quite an advance in the price of the articles which compose the ration.

So far as the bill contemplates an examination of the accounts and vouchers of Messrs. Kimberly Brothers with the view of determining what has been the advance in the cost of articles entering into the ration since the contracts were made, there seems to be no objection to such a measure. The result of such an examination would enable this department to determine what allowance would be just and equitable.

I beg leave to suggest that the bill be amended by the addition of these words at the end, "from time to time until the expiration of the contract," which would extend the operations of the act to the end of the fiscal year.

I consider it proper to say that Messrs. Kimberly and Brothers have been many times contractors with the Navy Department, and have always faithfully met their obligations. In the matter of their present contracts they have, up to this date, promptly complied with the conditions thereof, and will no doubt continue to do so, notwithstanding from their statements, which are believed to be true, they are daily subjected to loss.

It should be the policy of the government to protect good contractors as far as possible, as the best and surest means of getting rid of bad ones.

The copy of the bill is herewith returned.

Very respectfully,

R. W. THOMPSON,  
*Secretary of the Navy.*

Hon. W. H. KITCHIN,  
*House of Representatives, Committee on Expenditures in Navy Department.*

## PUBLIC BUILDING AT ALTOONA, PA.

MARCH 22, 1830.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ATHERTON, from the Committee on Public Buildings and Grounds, submitted the following

### REPORT:

[To accompany bill H. R. 5381.]

*The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 2035) for the construction of a public building at Altoona, Pa., now report:*

That the city of Altoona, situated a few miles east of the summit of the Alleghanias and on the main stem of the Pennsylvania Railroad, is a place of about 21,000 inhabitants, and about 25,000 people receive their mail at that point. The principal shops of the Pennsylvania Railroad are located there. It is situated in a region abounding in iron and coal. A large business is now done there and is rapidly increasing, and with the increase of business the population is being also rapidly augmented.

From a statement of the business of the Altoona post-office, appended to this report and made a part thereof, the receipts of the post-office proper, not including receipts from money-orders, were—

For fiscal year.....	\$12,527 50
Expenses of post-office and carrying mails .....	4,908 33
Balance paid to the Post-Office Department .....	7,619 17
Fees collected on money-orders.....	\$638 40
Paid from that source to Post-Office Department.....	244 11
	393 29

Making total receipts of that office over total expenditures (per year)..... 8,012 46

The internal revenue paid by various persons in Altoona amount to \$20,000 per year.

The assessed valuation of the real estate in Altoona proper is over \$3,000,000, and they have invested in water works and other permanent improvements \$425,000.

The post-office building now being used is only costing the government a rental of \$600 per annum, but it is inadequate in size and every accommodation, and is a disgrace to the city.

The room is 8 by 25 feet into which the public come for their mails. At one side of it is a four-foot exit, and on the other a little space of about four feet for lock-boxes.

A diagram of the room is hereto attached, showing more clearly than can otherwise be exhibited the inconvenience of the structure.

By careful inquiry we find that a building suitable in structure and sufficient in size to accommodate the public will cost at least \$200 per month.

The internal-revenue office of the district is not now held at Altoona, but I am informed would likely be if suitable accommodations could be had; and in any building that may be erected provision should be made for such an office.

There is another consideration of importance in connection with a public building at Altoona. The State of Pennsylvania is divided into two judicial districts, the eastern and western, divided by the Susquehanna River. The district and circuit courts of the United States for the western district of Pennsylvania are located at Pittsburgh, with occasional courts for the convenience of the public at Erie and Williamsport.

Altoona is so situated geographically and has such railroad connections that it is the best point in the eastern portion of this large district for a Federal court; it is 117 miles east of Pittsburgh, and nearly 100 west of the eastern boundary of the judicial district, and the public convenience would be greatly promoted by a court at that point. So that if a public building is to be constructed at Altoona, provision should also be made for the accommodation of a United States district and circuit court.

The amount asked in the bill for all these purposes is modestly fixed by the member introducing it at \$60,000. The committee therefore recommend the passage of bill H. R. 2035 by the substitute herewith submitted.

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[H. R. 2035. 46th Congress, 1st session.]

Mr. COFFROTH, on leave, introduced the following bill:

A BILL to provide for the purchase of a suitable site and the erection of a public building in the city of Altoona, Pennsylvania.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of sixty thousand dollars be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purpose of purchasing a suitable site and the erection thereon of a public building in the city of Altoona and State of Pennsylvania, to be used as a post-office, internal-revenue office, and for other government offices: *Provided,* That said building shall be erected and the money expended under the direction of the Secretary of the Treasury.

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To the Hon. A. H. COFFROTH,

*Member of House of Representatives from the Seventeenth District, Pennsylvania:*

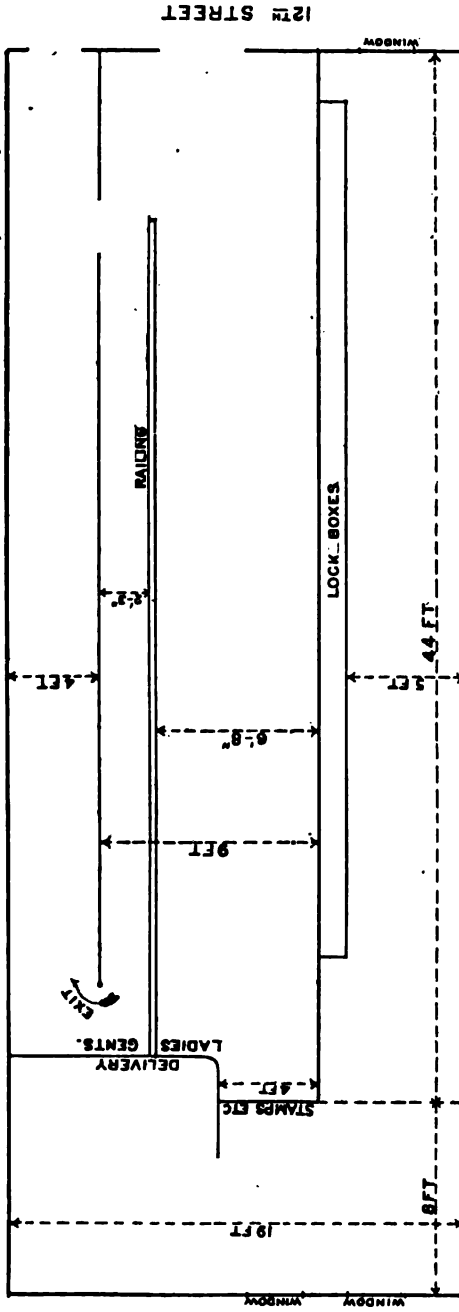
At a meeting of the citizens of Altoona City, held February 11, 1880, the undersigned persons were appointed a committee to visit Washington City to confer with you, and through you to Congress, to urge upon Congress the importance and necessity of erecting in the city of Altoona, Blair County, Pennsylvania, a public building for post-office purposes, &c.

In order to more fully lay before your honorable body the necessity of such a building, in said city, we herewith append a statement showing the amount of revenue received at said point by the United States Government over and above the expenditures; also, the population of the said city and surrounding country that transact business at this point; also a description of the present post-office and the great inconveniences that the people of Altoona City and vicinity labor under for the want of a proper post-office building.

We, therefore, in behalf the citizens of Altoona and vicinity, do most respectfully

# ALTOONA POST OFFICE.

Scale  $\frac{1}{8}$ " = 1 foot.



H. REP. 579-7.





petition your honorable body to favorably consider our wants, and grant us the favor therein sought, and we will ever pray, &c.

Very respectfully, yours,

JOHN REILLY.  
T. BLAIR PATTON.  
CHARLES J. MANN.  
S. M. WOODCOCK.  
CHARLES E. PUGH.  
H. J. CORNMAN.  
M. EDGAR KING.  
ANDREW J. RILEY.  
CHRIST. HAUSER.  
H. C. DERN.

DR. S. C. BAKER.  
THOMAS I. MCKIERNAN.  
T. P. RYNDER.  
L. KIEFER.  
FRANK MOLLOY.  
WILLIAM MURRAY.  
GEORGE W. GOOD.  
M. FITZHARRIS.  
D. A. GILLAND.  
A. V. DIVELY.

*Statement of business done at Altoona post-office for the year ending December 31, 1879*

Receipts of post-office .....	\$12,527 50
Expenses of post-office and carrying mails .....	4,908 33
<b>Amount paid to Post-Office Department .....</b>	<b>7,619 17</b>
Amount of money-orders issued.....	\$54,164 68
Amount of money-orders paid.....	17,047 10
Amount of fees collected from same .....	\$638 40
Amount of commissions—First quarter .....	\$54 17
Second quarter .....	59 95
Third quarter .....	62 99
Fourth quarter (estimated) .....	67 00
	<u>244 11</u>
Fees paid Post-Office Department .....	393 29
<b>Total receipts over expenses paid to Post-Office Department.....</b>	<b>8,012 46</b>
<b>Population of the city of Altoona .....</b>	<b>21,000</b>
Population of Millville, Allegheny Furnace, Connellsville, and surrounding country receiving mail matter at Altoona office .....	4,500
<b>Total population receiving mail matter at this office .....</b>	<b>25,500</b>
Revenue paid by the various business men in Altoona per year to the United States Government.....	\$20,000 00
The assessed valuation of real estate in the city of Altoona, over.....	3,000,000 00
<b>This is embraced within a boundary of two miles square and constitutes city proper.</b>	
Invested in water works .....	\$250,000 00
Invested in permanent improvements .....	175,000 00
<b>Total .....</b>	<b>425,000 00</b>

At this point are erected the Pennsylvania Railroad shops, the largest of the kind in the United States, employing upwards of 5,000 men.

*Description of the present building used for post-office.*

The building now occupied by the government as a post-office is situate on Twelfth street and Tenth alley, and parties having business at the office can enter by only one doorway. At the time of the delivery of the several mails the small space or room allowed the public is so crowded that parties are greatly delayed and subjected to great annoyance and inconvenience. Owners of boxes, by reason of the crowd, are unable to get access to their boxes, and persons wishing to purchase stamps, envelopes, postal cards, address letters, or transact proper business in the post-office, are greatly delayed and hindered by reason of the want of proper post-office facilities.

The room is 8 by 25 feet, and from this about 3½ feet is cut off by an iron railing, so that parties having business at the general delivery may obtain their mail matter, leaving a room 4½ by 25 feet for the use of box owners and parties wishing to purchase stamps, envelopes, and transact proper post-office business.

You will readily perceive, then, that the present building is unfit in every particular for the business for which it is used. We therefore believe that we have presented our claim honestly and fairly, and hope that our appeal will be favorably considered and the request granted. And we will ever pray, &c.

Respectfully submitted to the Committee on Public Grounds and Buildings.

A. H. COFFROTH,  
*Seventeenth District of Pennsylvania.*

○

PUBLIC BUILDING IN THE CITY OF SAINT JOSEPH, MO.

MARCH 22, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ATHERTON, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 5382.]

*The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 2665) to provide for the erection of a public building in the city of Saint Joseph, in the State of Missouri, now report:*

That Saint Joseph, a city of a population of about 35,000 inhabitants, situate on the right bank of the Missouri River, in the State of Missouri, is a place of considerable commercial importance and is rapidly increasing in population and business activity. No public buildings built or owned by the general government have been erected there.

A statement of the business of the post-office at Saint Joseph has been furnished by the General Post-Office Department, from which (among other things) appear the following statistics:

Number of carriers.....	7
Mail letters.....	843, 923
Postal cards.....	87, 923
Local letters.....	72, 119
Local postal cards.....	8, 927
Newspapers.....	638, 613
Collected letters.....	528, 823
Collected postal cards.....	168, 879
Collected newspapers.....	84, 983
Aggregate.....	2, 481, 347
Per carrier.....	354, 478
Aggregate (expense) free delivery.....	\$5, 225 27
Postage on local matter.....	2, 562 70
Gross revenue.....	41, 663 46
Office expenses.....	\$11, 931 98
Free delivery.....	5, 225 27
Total expenses.....	17, 157 25
Net revenue.....	24, 596 21

The money-order business done is very large, as will be seen by a detailed statement of the same accompanying this report.

The amount of internal revenue paid by citizens is \$72,677.49.

In answer to a request for information made and addressed to the Secretary of the Treasury, as required by the resolution of the commit-

## 2 PUBLIC BUILDING IN THE CITY OF SAINT JOSEPH, MO.

tee, the committee is informed that that officer is not in possession sufficient information to enable him to judge correctly as to the need a public building at Saint Joseph, and that the only sum now paid \$300 per annum for apartments used as a post-office.

This statement led to an inquiry as to the reason a post-office could be procured at so moderate a rental, and it appears that rival interests desiring the present location of the post-office in different quarters the city have resulted in those interested making inducements by voluntary contributions to pay in part the rental, and that a fair rental for a suitable building would be about \$            per year.

As such a state of things is not likely to continue, and is accidental, your committee think it should not control their action, and that a suitable building should be erected at Saint Joseph for a post-office; and they recommend the passage of the accompanying substitute for said bill.

○

W. W. SCREWS.

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MARCH 22, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. SAMFORD, from the Committee on Claims, submitted the following

## REPORT:

[To accompany bill H. R. 3749.]

*The Committee on Claims, to whom was referred the bill (H. R. 3749) for the relief of Wallace W. Screws, have had the same under advisement, and beg leave to report:*

The claim is made up of advertisements published by the claimant in the Montgomery Daily Advertiser in the latter part of the year 1875, said advertisements consisting of Army orders, proposals for bids for Army supplies, sales of government stock, &c., all of which was ordered by the commanding officer of the Department of Alabama, Maj. Gen. Henry E. Davies, jr., and a printed copy of each advertisement is in the proof furnished.

The committee find that the claimant filed his claims in due time, as required by law, properly verified by affidavit, and has been in constant effort to obtain their payment since.

Your committee therefore recommend the passage of the said bill, with an amendment inserting the word "five" after the word "sixty."



SAMUEL A. LOWE.

MARCH 22, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAMFORD, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 937.]

*The Committee on Claims, to whom was referred the claim of Samuel A. Lowe, have had the same under advisement, and submit the following report:*

This claim has heretofore, in the Forty-fifth Congress, received favorable consideration and a favorable report. After examination, your committee find that the facts are succinctly and correctly set forth in the report of Mr. Ellsworth, and your committee ask leave to adopt his report, as follows:

*The Committee of Claims, to whom was referred the bill (H. R. 2988) for the relief of Samuel A. Lowe, have had the same under careful consideration, and report:*

That on the 30th day of June, 1854, Kansas was organized as a Territory; that the first legislative assembly of said Territory, and which was elected March 30, 1855, convened at Pawnee, about 150 miles west of Saint Louis, Mo., under the proclamation of Governor Reeder, and, after organizing, passed an act removing the seat of government temporarily to Shawnee Manual Labor School, in said Territory; that during the sitting of said legislative assembly at Shawnee the memorialist, Samuel A. Lowe, was elected by said assembly one of the assistant clerks, and afterward, by a concurrent resolution of the house and council, was appointed and employed to copy, make marginal notes, and index the laws of said Territory which should be enacted at said session of said assembly.

Afterward an act was passed, which became a law, at said session of said Territorial assembly, appointing and authorizing the said memorialist to superintend the publication, arrange the order, and examine and correct the proof-sheets, and to cause all clerical and typographical errors to be corrected; all of which services, it fully and satisfactorily appears, the memorialist performed.

It also further appears that the memorialist was obliged to employ considerable assistance in accomplishing said work, and that in doing so he paid for such aid out of his own funds; that the memorialist, in consequence of the unsettled condition of the Territory and the high prices of labor at that early day in the said Territory, was compelled to pay 12½ cents per folio for copying and high prices for all other services; that the laws enacted by said Territorial assembly had to be printed at Saint Louis, Mo., and the memorialist was compelled to remain in Saint Louis during the publication of the same at large expense, and that he has paid in money from his own pocket, in the faithful discharge of his duties as aforesaid, more money than is asked for in the bill referred to this committee for his relief; that the said Lowe has never received any pay or compensation whatever from said Territory, or from the United States, or from any other source whatever for any of said services.

It also appears, by the proper officers of said legislative assembly and by the printer of said laws, that said services were well and faithfully performed by said memorialist; and that they were important services, and could not be dispensed with, your committee think there can be no doubt.

The memorialist has shown reasonable diligence in presenting his claim for pay for

such services. In 1856, after learning that the proper governmental department had no authority to reimburse him for said work, he presented his memorial in the United States Senate for consideration, which was referred to the Committee on Territories, but no report was made by that committee. Afterward it was called up in the House and referred to the Committee on Territories. In 1874 it was reported back to the House by the Committee on Territories and referred to the Committee of Claims; and in March last the present bill was introduced, and the matter referred again to the Committee of Claims.

Your committee think the claim a just one in every respect, and that it ought to be paid; and therefore report back the bill with recommendation that it do pass.



## DES MOINES RIVER LANDS.

MARCH 25, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. CONVERSE, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 1067.]

*The Committee on the Public Lands, to whom was referred House bill No. 1067, beg leave to submit the following report:*

The following is a copy of the bill:

H. R. 1067, Forty-sixth Congress, second session.

A BILL to quiet title of settlers on the Des Moines River lands in the State of Iowa, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it was the true intent and meaning of the act of Congress approved March third, eighteen hundred and seventy-one, entitled "An act confirming the title to certain lands," to ratify and confirm the adjustment and settlement of eighteen hundred and sixty-six therein referred to, and the title to the lands claimed, allowed, set apart, and received thereby and thereunder, as a full, complete, and final adjustment and satisfaction of all right and claim of the State of Iowa, and its grantees, under the joint resolution of Congress, March second, eighteen hundred and sixty-one, entitled "Joint resolution to quiet title to lands in the State of Iowa," and the act of Congress approved July twelfth, eighteen hundred and sixty-two, entitled "An act confirming a land-claim in the State of Iowa, and for other purposes"; and that the said act of eighteen hundred and seventy-one was not intended to be, and shall not be construed to be, a grant of additional lands to said State, or its grantees; and that all lands for which indemnity lands were selected and received, except such as were sold by the United States prior to the said joint resolution of eighteen hundred and sixty-one, are, and are hereby declared to be, public lands of the United States: *Provided,* That the title of all bona fide settlers under color of title from the State of Iowa and its grantees, or the United States and its grantees, which do not come in conflict with pre-emption or homestead claimants, are hereby ratified, confirmed, and made valid: *And provided further,* That the claims of all persons who, with intent, in good faith, to obtain title thereto under the pre-emption or homestead laws of the United States, entered or remained upon any tract of said lands, not exceeding one hundred and sixty acres, are hereby confirmed to them, their heirs or assigns, and upon due proof thereof, and payment of the usual fees and price, shall be carried to patent.

SEC. 2. That it is hereby made the duty of the Attorney-General, within ninety days after the passage of this act, to institute, or cause to be instituted, such suit or suits, either in law or equity, or both, as may be necessary and proper to assert and protect the title of the United States to said lands, and remove all clouds from its title thereto; and until such suits shall be determined, and Congress shall so provide, no part of said lands shall be open for settlement or sale except as hereinbefore provided. And in any suits so instituted, any person or persons in possession of or claiming title to any tract or tracts of land under the United States, involved in such suits, may, at his or their expense, unite with the United States in the prosecution of such suits: *Provided,* That no part of this act shall apply to or in any manner affect lands certified by the United States to the State of Iowa for the use and benefit of the Keokuk, Fort Des Moines and Minnesota Railroad Company, its successors or assigns.

The principal object and purpose of the bill is to afford relief to about eight hundred or a thousand settlers and their families embracing a

population of four or five thousand inhabitants, and provide the means of quieting the title to their lands, and also to recover and quiet the title in the government to lands which are claimed by the Des Moines Navigation and Railroad Company and its assigns, and which it is believed lawfully and of right belong to the United States, embracing in all about 213,000 acres, of the value of about \$3,000,000.

The idea of improving the navigation of the Des Moines River had its origin more than thirty-seven years ago in the fertile brain of that impracticable theorist, Captain Frémont, of the Topographical Engineers, and he, more than any other man, is responsible for the squandering of so much treasure in an attempt to carry into practice his wild and speculative theories of civil engineering on that river. (Ex. Doc. No. 38, Third session Twenty-seventh Congress.)

The numerous acts of Congress and of the legislature of Iowa on this subject, the numerous and contradictory decisions and rulings of the different Secretaries of the Treasury, and of the Secretaries of the Interior, and the Commissioners of the General Land Office, and of the Attorneys-General, and the ingenious and apparently conflicting opinions of the Federal courts and of the State courts in one form or another on this prolific subject, form a curious history of many pages, instructive alike to the legislator, the lawyer, and the political economist.

The material facts which connect themselves with this measure and justify its provisions are the following:

In August, 1846, Congress passed an act entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory." It is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Racoon Fork (so called) in said Territory, one equal moiety, in alternate sections, of public lands, (remaining unsold and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles wide on each side of the river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.*

SEC. 2. *And be it further enacted, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State formed out of the same, except as said improvement shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sale shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended, and the fact of expenditure shall be certified as aforesaid.*

SEC. 3. *And be it further enacted, That said Des Moines River shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or charge whatever, for any property of the United States or persons in their service passing through or along the same: Provided, always, That it shall not be competent for said Territory, or future State of Iowa, to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.*

SEC. 4. *And be it further enacted, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purposes shall become and be the property of the said State for the purpose contemplated in this act and for no other: Provided, The legislature of the State of Iowa shall accept the said grant for said purposes.*

Approved August 8, 1846.

The first section of the act required the lands to be selected by an agent of the Territory, and the selection to be approved by the Secretary of the Treasury.

The second section prohibited the sale of the lands except as therein provided—first, to the amount of \$30,000; and on a certificate to the Pres-

ident of the United States that \$15,000 had been expended, secondly, to sell to an amount sufficient to replace each successive expenditure of \$15,000. And such sales to progress from time to time as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

The third section prohibited the sale of the lands at less than the minimum price of other public lands.

The fourth section required the State, whenever the Territory became a State, to accept the grant by an act of the legislature.

The Des Moines River, as now known and recognized, enters Iowa near the northwest corner, and runs in a southeasterly direction through the State, emptying into the Mississippi River near the southeast corner. The Raccoon Fork empties into the Des Moines River at Des Moines, the capital of the State, and about one-third of the distance across the State from the southeast corner.

It is claimed, on the one side, by the Des Moines Navigation and Railroad Company and their assigns, that the foregoing act of August 8, 1846, was a grant of alternate sections for 5 miles on either side of the Des Moines River, from its mouth to the north line of the State. This construction is denied by the settlers, on the other side, who claim that the grant only extends to the Raccoon Fork. If the grant extends to the north boundary of the State it would embrace the lands of the settlers and also these claimed for the government. If it extended only to Raccoon Fork then we must examine further.

Some light may be thrown on this subject by the following letter addressed to Hon. A. C. Dodge, Delegate from the then Territory of Iowa, who was the author of the bill, which afterwards passed in the form above stated, and was approved August 8, 1846. The letter accompanied the report of the Public Lands Committee of the House of Representatives on the bill, and formed the basis for the action of Congress thereon :

GENERAL LAND OFFICE, May 5, 1846.

SIR: In answer to your inquiry, I have the honor to state that the amount of unsold and within 5 miles on each side of the Des Moines River, from its mouth to the Raccoon Fork, proposed to be granted to the Territory of Iowa by House bill No. 106, is estimated at 261,000 acres. There have been sold in the Territory of Iowa, to the 1st of January, 1846, 1,730,050 acres, and the amount of the purchase money received by the United States to the same date is \$2,164,102.

Very respectfully, your obedient servant,

JAMES SHIELDS,  
Commissioner.

Hon. A. C. DODGE,  
House of Representatives.

The claim of the author of that measure, while it was pending, and it was so represented by the Commissioner of the General Land Office, was that the grant only extended to Raccoon Fork, and embraced about 261,000 acres. The State of Iowa has already received on account of the Des Moines River improvement 556,686.74 acres above Raccoon Fork, and about 300,000 acres below, besides 56,000 under the resolution of 1861. She has received from the United States 297,000 acres as indemnity for these very lands in controversy, and now these lands themselves are claimed, notwithstanding the large indemnity, by persons claiming title from the State of Iowa.

In addition to the foregoing facts the act of August 8, 1846, in a little over two months after its passage, received construction by the Commissioner of the General Land Office, and the State of Iowa, by her acts, also construed the act limiting the grant to the Raccoon Fork.

On the 17th day of October, 1846, Mr. James A. Piper, Acting Commissioner of the General Land Office, addressed the following letter to

the register and receiver of the land office at Iowa City relating to this grant :

GENERAL LAND OFFICE, *October 17, 1846.*

GENTLEMEN: By the first section of the act of Congress approved 8th of August, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is enacted "that there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called), in said Territory, one equal moiety, in alternate sections of the public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent, or agents, to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

This grant, you perceive, affects the land five miles in width on each side of the Des Moines, from the southern boundary of your district to the Raccoon Fork of the Des Moines, as shown by the inclosed diagram. No action can be had by you in this matter, however, till you are advised by the governor whether he will select the sections with the odd or those with the even numbered. As soon as you are so advised you will please reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by him till further orders from this office.

Very respectfully, your obedient servant,

JAMES A. PIPER, *Acting Commissioner.*

REGISTER and RECEIVER, *Iowa City, Iowa.*

A list and diagram of the vacant lands in the sections lying below Raccoon Fork were transmitted to the governor, with a request to him to determine whether he would take the lands in the even sections or in the odd sections, stating that when selected the list of the sections would be immediately prepared and submitted to the Secretary of the Treasury for his approval, and when so approved would be certified.

The governor appointed Jesse Williams and Josiah H. Bonney to make the selections, who reported December 17, 1846, that they had selected the odd sections designated on the map furnished by the General Land Office.

This was a full compliance with the first section of the act, and defined and located the grant of lands lying below Raccoon Fork. The selection was made by an agent of the Territory. The simple right remained to the State of accepting the grant or not; which was done by the legislative act of January 9, 1847. By the joint act of the land officers of the United States, and of the agent of the Territory, the selection, according to the terms of the grant, was made, and the act became an executed act from the date of the approval of the list by the Secretary of the Treasury.

On the first day of April, 1849, there was filed in the office of the secretary of State of Iowa, "a condensed list showing the tracts vacant and undisposed of in the odd sections within five miles of the Des Moines River from its mouth to the Raccoon Forks (so-called), selected by the commissioner appointed by the governor of Iowa Territory, under the provisions of the act of Congress approved the 8th day of August, 1846, entitled 'an act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory, within the limits of the Iowa City district.'" This list is dated March 12, 1849, is authenticated by the signature of Richard M. Young, commissioner, and does not contain the lands in controversy, but does include all the remainder of the section. *The Des Moines Navigation and Railroad Company vs. Cooper*, 41 Iowa, 279.

Under this certificate the supreme court of Iowa held that the terminal line of the grant under the law of 1846 was neither an east or west line, but a diagonal line through the section in controversy, nearly at right angles with the course of the river at the forks.

The court decided, "that the lands in question are above or outside

of the terminal line adopted by the government in 1846 and acquiesced in by the State in making its selections, and we are unable to say that a different line should have been adopted."

The legislature of Iowa accepted the grant on the 9th day of January, 1847, but no lands were selected in the country north of Raccoon Fork, which was then occupied by settlers, and this construction of the act was acquiesced in for about two years. It is difficult to see how any other construction could have been given, since the law is well settled that all grants of this description are to be strictly construed *against* the grantees, and that nothing passes but what is conveyed in clear and explicit language. The unreasonableness of a different construction is made still more manifest by the fact that the greater part of these lands north of the Fork were covered by an Indian reservation which was not relinquished until 1853.

But through influences which cannot now be certainly known, another construction was discovered, and Richard M. Young, then Commissioner of the General Land Office, wrote to the board of public works of Iowa, on the 23d of February, 1848, interpreting the grant as extending to the northern boundary of the State. The President of the United States, however, on the 19th day of June, 1848, proclaimed the lands for sale above the fork of the river, and 25,000 acres were sold and pre-empted thereunder, against which the board of public works protested in a letter to the Commissioner, dated September 18, 1848. This was followed by a remonstrance from the Senators and Representatives of Iowa then in Washington, including A. C. Dodge, the author of the bill, and others who had asked the passage of the bill on the representation that the grant did not extend above Raccoon Fork, and who had acquiesced in that decision for two years, dated January 8, 1849, addressed to Hon. Robert J. Walker, Secretary of the Treasury, against the construction of the act which limited the grant to the lands lying below the Raccoon Fork.

The Secretary, in a reply dated March 2, 1849, agreed with them and asserted that the grant extended on both sides of the river, from its mouth to its source. In pursuance of this letter Mr. Young, the Commissioner of the General Land Office, on the 1st of June following, directed the register and receiver at Iowa City to withhold from sale the lands north of the Fork. It may be remarked here that the jurisdiction of said officers only covered a part of said lands extending only up to the 3d township.

The Secretary of the Treasury (Walker) went out of office without this opinion having received execution. Attorney-General Johnson, in his opinion of July 19, 1850, concurred in Walker's opinion; but an adverse opinion had been given by Mr. Ewing, the first Secretary of the Interior, on the 6th of April previous, as follows:

DEPARTMENT OF THE INTERIOR,  
*Washington, April 6, 1850.*

SIR: Having considered the question submitted to me connected with the claim of the State of Iowa to select under the act of August 8, 1846, lands for the improvement of the Des Moines River, I am clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Fork without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8, 1846, itself, that it was not the intent of the act to extend it farther. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law not having been carried into effect by him, his opinion, merely expressed, is open for reversion.

The lists of selections and other papers submitted with your letter of the 13th ultimo are herewith returned.

As Congress is now in session, and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING, *Secretary.*

*The Commissioner of the General Land Office.*

Alex. H. H. Stuart was Mr. Ewing's successor in the Department of the Interior, and, on application, Attorney-General Crittenden, under date of June 30, 1851, gave his opinion to the Secretary of the Interior as follows:

The act of Congress of 8th August, 1846, granting to the Territory of Iowa, for the purpose of aiding to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, one equal moiety in alternate sections of the public lands in a strip five miles in width on each side of said river, to be selected, &c., subject to the approval of the Secretary of the Treasury, did not include the land above Raccoon Fork.

The opinion of the Secretary of the Treasury on this subject, expressed on the 2d of March, 1849, has no obligatory effect on the power of his successor to reject the selections made under it in the event of a disagreement as to the proper construction of the act.

Nor was the opinion of Attorney-General of July 19, 1850, more than advisory. No law makes it binding upon the Secretary of the Interior.

I am clearly of opinion that the proper construction of the law, as respects the grant, was given by the letter of the Commissioner of the General Land Office, of 17th October, 1846, before mentioned, and that the attempt to extend the law so as to include the lands above the Raccoon Fork to the headwaters of the Des Moines River is not warranted by the statute. Notwithstanding the decision of the Secretary of the Interior (Mr. Ewing) of April 6, 1850, the Congress have made no explanatory act in favor of Iowa; nor have the Senators nor Representatives of Iowa (so far as I am informed) made any complaint to the Congress of the United States for relief against the manner in which the act of 1846 has been carried into execution. (Opinions of Attorneys-General, vol. 5, p. 390-395.)

On the 26th of July, 1851, Mr. Stuart, Secretary of the Interior, gave an opinion concurring in the construction of the grant by Secretary Ewing, and again on the 29th of October, 1851, still adhering to the same opinion, but believing that the question of the construction of the act of August 8, 1846, was more a judicial question than executive, and that any decision he might make would not be final, expressly stating that it should be without prejudice to the rights of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary, instructs the Commissioner of the General Land Office to make out lists of alternate sections for approval: and they were made and certified on the next day, on these expressed conditions, for a distance of eighty miles above Raccoon Fork, under the act of August 8, 1846. These lands, together with some certified under the resolution of 1861, as per the settlement of 1866, are the lands in controversy.

On the 25th of March, 1856, the subject of the construction of the grant of August 8, 1846, came before Mr. McClelland, then Secretary of the Interior, on appeal from the decision of the Commissioner of the General Land Office, who had limited the grant to Raccoon Fork. He also held the grant not to extend above Raccoon Fork. So also, Attorney-General Cushing, on the 10th day of May, 1856 (Opinions of Attorneys-General, vol. 7, p. 691), in the syllabus, says:

Congress in 1846, for the purpose of improving the navigation of the Des Moines River from its mouth to the Raccoon Fork, granted to the Territory of Iowa alternate sections of land in a strip five miles in width on each side of said river.

As construed by the government at the time, and as accepted by the State of Iowa, this grant extended only to the Raccoon Fork.

Subsequently to this, the Secretary for the time being (Walker) expressed an opinion that the grant extended up the river to its source, but went out of office the next day without this opinion having received execution. The succeeding Secretary

(Ewing) entertained a different opinion, and refused to approve selections above the fork.

Reference being made to the Attorney-General (Johnson), he expressed opinion that the grant extended to the source of the river, but the Secretary did not act on that opinion.

Reference was then made to the succeeding Attorney-General (Crittenden), who held that the grant did not extend above the fork.

The Secretary (Stuart) entertained and officially expressed the same opinion; but without changing his opinion, and in his order expressly saying it was unchanged, he ordered selections to be allowed above the fork up to the north boundary of the State.

On question of duty of the present Secretary (McClelland), it is held—

The true construction of the act and its intention were to grant lands from the mouth of the river to Raccoon Fork and no farther.

The following is the opinion of Judge J. S. Black, on the subject. (Lester's Land Laws, No. 3, page 504.)

The grant is certainly obscure in its phraseology. A person whose faculties are sharpened by an interest in the claim can see it extending to the headwaters of the Des Moines plainly enough; while an advocate of the other side might perceive with equal clearness the construction which stops at the Raccoon Fork. Nay, more, it has actually divided the judgment of the ablest men and the soundest lawyers in the service of the government. Mr. Walker and Mr. Johnson could not have been in favor of the larger interpretation unless there had been cogent and good reasons for it. On the other hand, Mr. Ewing, Mr. Crittenden, and Mr. Cushing, would not have set their faces against it if opposite considerations of great weight had not been presented to them. And surely, if it had been a tolerably plain case either way, Mr. Stuart and Mr. McClelland would not have kept it poised in their scales for seven years without determining where the preponderance was; much less would either of them have offered to settle it by compromise.

In truth, this law has been treated for a dozen years as no plainly written law could be treated.

But for my own part, I have not the least doubt about it. My reason may seem paradoxical, but the very obscurity of the grant, in my judgment, makes it clear. It is out of these doubts that certainty grows. In every doubtful case, we know very well what we ought to do, as soon as we ascertain which party is entitled to the benefit of the doubt. We shall see who is entitled to it here. It is well settled, that all public grants of property, money, or privileges are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant, is withheld. This is most especially true of legislative grants, and for very good reasons the rule ought to be adhered to with unyielding firmness. We all know the fact, and we are not bound to seem ignorant of it, that gifts like this are often caused by private solicitation and personal influence. The bills are almost universally drawn up by their special friends, and may be made ambiguous on purpose to disarm their opponents or put suspicion asleep. If you let the grantees have the advantage of the ambiguity which they themselves put into their own laws, many of them will get a meaning which Congress never thought of.

Acts which were supposed to have but little in them when they passed will expand into very large dimensions afterwards. An ingenious construction will make that mischievous which was intended to be harmless.

The remedy for these evils, and they are evils to the public morals as well as to the Treasury, is to let all men know that they can get nothing from the United States except what Congress has chosen to give them in words so plain that their sense cannot be mistaken. I do not know any reason for suspecting the slightest bad faith in this case, but it comes within a general rule which must be maintained, in order to prevent a general mischief.

It should, however, be remembered, that the grant was construed at the Land Office, immediately after its passage, to extend no further than the Fork, and this was acquiesced in by the State authorities for upwards of two years. The idea that it went to the source of the river was certainly an after-thought.

I do not say that this estops them now, or that their mistake, if it had been a mistake, should prevent them from getting all that was given. But when this law was on its passage it would have been easy to say that half the land on each side of the river up to its source should belong to the Territory. Not being said, we cannot presume that it was intended. A word or two would have put the meaning beyond the reach of a doubt; but the ambiguity was left in the bill, and leaving it there was the fault of its framers and its friends. They, and not the United States, must suffer the consequences.

Yours, very respectfully,

J. S. BLACK.

Hon. JACOB THOMPSON,  
Secretary of the Interior.

On the 10th day of November, 1856, Secretary McClelland refused to certify any more lands, conditionally or otherwise, under the act of August 8, 1846, and thereupon the Navigation Company refused to go on with the work, and the improvement of the navigation of the Des Moines River was therefore practically abandoned.

In accepting the grant as provided in the fourth section of the act of August 8, 1846, the legislature of the State of Iowa requested Congress to dispense with the restrictions in the second section, so that the State might sell and dispose of the lands in any quantity and at any time it deemed best to effect the contemplated improvement. Congress did not accede to that request.

The first certificate of the governor of the State under the second section was made on the 17th of November, 1848. The second certificate was dated June 11, 1849. The State organized a board of public works with control of this improvement. The first act, approved February 24, 1847, section 26, restricted the board in regard to the sale of lands, provided "the board shall proceed to sell the lands donated for such improvement as fast as the funds shall be required, and as shall be permitted by the terms of the said grant." (Revision of 1860, p. 892.)

January 15, 1849, another act was passed reorganizing the board of public works, providing in section 4—

That it shall be the duty of said board to proceed, as fast as the necessity of said work demands and the conditions of the grant will permit, to offer at public sale the lands appropriated for said improvement in such parcels as they may select, giving at least two months' notice to pre-emptors. (Revision 1860, p. 896.)

The amendatory act passed February 5, 1851, vested in a commissioner and register of the Des Moines River improvement the powers of the board of public works, leaving the same restrictions on them which governed the board of public works.

Subsequent acts authorized the commissioner and register to sell and dispose of all and any lands which have been or hereafter may be granted by Congress for the improvement of the Des Moines River in such manner as they may deem most expedient for the early completion and vigorous prosecution of said improvement. (January 19, 1853.)

An act, passed January 24, 1853, authorized the election of the commissioner and register by the people, and appointed two assistants with power to make contracts for the completion of the improvement, providing, however, section 9—

Any contract made under the laws, now or hereafter to be in force, shall be so made as to protect the State from any damages under any pre-existing contract; and, in no event, shall the State be liable for any contract made or to be made, but the person or company contracting shall look alone to the funds belonging to and arising from said improvement. (Page 904, Revision of 1860.)

By an act passed March 22, 1858, it was made the duty of the register of the State land office to issue patents to the purchasers of Des Moines River improvement lands purchased prior to the 9th day of June, 1854, and the duty of the governor to sign such patents. This law was for the benefit of parties who had purchased lands from the State, and was designed to protect the rights of the various purchasers who had bought lands above the Raccoon Fork; the names of those parties, the descriptions of the lands, dates of the sales, dates and numbers of the patents being given in the record in the case of *Wells vs. Riley*, pages 141 to 162, inclusive.

The Des Moines Navigation Company was organized May 6, 1854; one of the members being Edwin C. Litchfield. Subsequently, on the 9th day of June, 1854, a contract between the Des Moines Navigation Company and the commissioners of the State of Iowa was executed. This



contract provided for the payment of all debts of every kind and description against the Des Moines River improvement on the 23d day of December preceding, provided the amount of the debt did not exceed \$60,000, and with the condition that the company should be entitled to all moneys due or owing to the said improvement from the general government, all claims and demands against the general government, and all sums of money due from any source, and all sums of money in the hands of the register or that were in his hands on the 17th of December, 1853, or that was received since that time, and all claims for tolls from mill owners or other persons, the right to all materials of every kind belonging to the improvement, and the full control of the entire work for forty years, and of all tolls and water rents that might accrue from it, or benefit by any contract, or contracts, or agreements made with reference thereto, and afterwards by an agreement bearing the same date extended that time to sixty years from the 1st day of July, 1858, which was over fourteen years beyond the life of the Navigation Company by the terms of its charter. This contract was not a simple contract for the construction of the Des Moines River improvement, but a contract giving the company the absolute control of the income of this improvement for sixty-four years from and after the date at which the contract was to be completed. The Navigation Company agreed to complete the work in four years, doing one-fourth part of the work each year.

The eleventh section provided that whenever the company had done work to the amount of \$30,000, the State should transfer and convey to the party of the first part \$30,000 worth of land, and in this proportion on each estimate of \$30,000 worth of work until work shall be done to the amount of \$1,300,000. No such certificate was ever issued while the work was in progress, which is proof that the Navigation Company never performed \$30,000 worth of work under it.

At the time this contract was made, according to the agreement of counsel in the case of *Wells vs. Riley*, the State had 53,000 acres of land below the Racoon Fork already selected. That land, or the proceeds of it, went to the Navigation Company, and the proceeds of the 261,000 acres below Racoon Fork went either to that company or the State. The amount of land the State would have been entitled to according to its claim that the grant extended to the north boundary of the State was 558,004 acres, in addition to the 314,000 acres below Racoon Fork.

This contract with the Navigation Company was in violation of the second section of the statute of August 8, 1846, and the company never became entitled to the conveyance of an acre of the grant to the State, because after the date of that contract no certificates were made to the president in accordance with the second section of the act of 1846. The State was empowered to sell only when certain conditions were complied with. *This made the grant not absolute, but conditional*, and all parties to whom the State made sales had notice of the terms of the grant, and whatever they purchased in land exceeding the value of \$15,000 in excess of the amount expended they purchased with notice that the sale was void. The purchaser took his title with the same notice which the State had. The rule applies to this case that "in each case the person dealing with the agent, knowing that he acts only by virtue of a delegated power, must at his peril see that the paper on which he relies comes within the power under which the agent acts." (7 Wallace, 676.)

"The jurisdiction is a special one, and he may not transcend it; and if he do, his act is void." (The Grey Jacket, 5 Wall., 369.)

A sale of public land in violation of a treaty or a statute is a nullity. (*Ladiga vs. Roland*, 2 Howard, 590.)

As a matter of fact, after June 1, 1854, no certificate by the governor

was sent to the President of the United States until April 28, 1853, more than one month after the State had quitclaimed to the Des Moines Navigation Company its interest in lands already certified to it, and eighteen months after the improvement had been abandoned. This certificate, being in violation of the statute of 1846, is void.

On the 22d of March, 1858, when the State authorized a settlement of the claims of the Des Moines Navigation Company, it had no power to sell the 53,000 acres below the fork, much less the 213,493.79 acres above the fork, now claimed by the Navigation Company.

By the act of January 15, 1849, section 2, the State of Iowa agreed never to interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress might find necessary for securing the title in said soil to the *bona fide* purchasers thereof. (Revision of 1860, p. 981.)

The State was estopped from making any contract with the Des Moines Navigation Company which was in violation of the second section of the act of 1846, and both the contract for the work and the contract of settlement and the conveyances thereunder by the State were in violation of the act of 1846.

As before stated, the Navigation and Railroad Company, in November, 1856, refused to go on with their contract and abandoned the work. The disagreement between the State and the Navigation Company growing out of the contract and the abandonment of the work was settled by a resolution of the Iowa legislature of the date of March 22, 1858, which was finally accepted by the board of directors of the Navigation Company, incorporated under the laws of Iowa, at their office in New York City, on the 15th day of April, 1858. By this arrangement the State of Iowa was to convey to the company all the lands approved and certified to her at that date by the general government under the act of 1846, in payment of all claims of the company against the State on account of contract for improvement, except 25,000 acres sold by the general government, and excepting what the State had sold prior to December 23, 1853. In pursuance to this resolution and its acceptance, the governor, during 1858, conveyed to the Navigation Company all the lands certified (they were only conditionally certified) to the State, with the exception above named, and by the laws of the State the deed could be only a quitclaim, so that any after-acquired title would not inure to the benefit of the Navigation Company.

These transactions were further complicated by the fact that in May, 1856, Congress granted lands to the State of Iowa to aid in constructing four railroads across the State from east to west. Three of these roads crossed the lands in question at and above Raccoon Fork, and the State, on the 14th of July, 1856, conferred these lands upon four railroad companies. These companies claimed the odd-numbered sections within five miles of the river as coming to them under said grants for railroad purposes.

August 3, 1854, Congress passed an act, as follows:

*Be it enacted, &c.,* That in all cases where lands have been, or shall hereafter be, granted, by any law of Congress, to any one of the several States and Territories, and where said law does not convey the fee-simple title of such lands, or require patents to be issued therefor, the lists of such lands which have been, or may hereafter be, certified by the Commissioner of the General Land Office, under the seal of said office, either as originals or copies of the originals or records, shall be regarded as conveying the fee-simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

The State had sold above the fork 44,838 acres, acting under the conditional certificate of Secretary Stuart, prior to the passage of this act of 1854. It had not, at that date, sold any land to the Des Moines Navigation Company, but had simply contracted to sell. The certificate of Secretary Stuart, so far as it embraced lands above the fork, was declared by this act to be perfectly null and void. This act was notice to the Des Moines Navigation Company that 213,000 acres which they claim, as comprised in patents Nos. 9, 10, 11, 12, 13, and 14, issued May 3, 1858, on sales purporting to have been made May 14, 1855, and May 5, 1856, having been made after the passage of the act of August 3, 1854, were absolutely null and void. The sales made by the State itself to individuals, to the extent of 44,000 acres, were, all of them, made prior to the passage of the act of August 3, 1854, and the persons who bought were treated by the State and the United States as having an equitable title to the land, and their rights were protected by the joint resolution of 1861, which confirmed the titles of those who bought of the State in good faith. The Des Moines Navigation Company was not a purchaser in good faith, because its purchase was made when it had notice of the limitations of the law of 1846 and the provisions of the law of August 3, 1854. See *Brush vs. Ware*, 15 Pet., 111.

The joint resolution of Congress of March 2, 1861, is as follows :

*Resolved, &c.*, That all the title which the United States still retain in the tracts of land along the Des Moines River and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress approved August 8, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

The Des Moines Navigation Company at the time it bought knew that the certificate issued by Secretary Stuart was issued reserving the rights of settlers or other parties, and did not on its face purport to be such a certificate as was authorized by the law of August 8, 1846. In April, 1860, the Supreme Court of the United States decided the case of *The Dubuque and Pacific Railroad Company vs. Litchfield* adversely to Litchfield (23 Howard, 66), on the ground that the grant under the act of 1846 did not extend above the Raccoon Fork, and this rule of strict construction of grants was reaffirmed in the case of *Leavenworth vs. Railroad Company* (2 Otto, 740), the court holding "in other words, what is not given expressly or by necessary implication is withheld." Under this decision an Indian reservation was excepted from a railroad land grant.

Litchfield, a purchaser from the Navigation Company, brought ejectment against the Dubuque and Pacific Railroad Company, who claimed under the land grant of 1856. To defeat Litchfield it was only necessary to show that he had no title, and the court so held on the ground that the act of Congress did not grant any land above the Raccoon Fork. The court says :

No authority was conferred on the executive officers administering the public lands to do more than make *partition* between the tenants in common, Iowa and the United States, in the manner prescribed by the act of Congress. The premises in dispute lie sixty miles beyond the limits of the tracts granted; it was, therefore, impossible to make partition, under this grant of lands lying outside of its boundaries, and all attempts to do so were merely nugatory.

Under this decision, persons who had bought of the State and paid the full government price for lands above the fork were left absolutely without title. The joint resolution of 1861 was passed for their benefit. This resolution is to be strictly construed, and is confined to the lands now held by *bona fide* purchasers from the State of Iowa. It did not and could not convey title to lands sold, or agreed to be sold, by the

State of Iowa after the 3d of August, 1854. Prior to April, 1860, settlers had gone upon the lands in good faith, believing, from the decisions of the department, that the lands were open for settlement. But the officers refused to receive proofs, and they were compelled to wait until the title which the Navigation Company claimed had been judicially determined. After 1860 they filed their claims, these lands being liable to pre-emption and settlement. Mr. Litchfield filed his bill to enjoin the land officers from permitting settlers to file pre-emption papers. The court below dismissed his bill. The Supreme Court affirmed the decree of the lower court on the ground that the land officers had the right to decide whether the lands were liable to pre-emption or not; and also on the ground that the settlers were not parties, and that the right of pre-emption was a valuable and recognized right which ought not to be destroyed without a hearing upon the part of the party interested. (*Litchfield vs. Receiver*, 9 Wall., 578.)

In the year 1862 Congress enacted the following, which was approved on the 12th of July:

That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Racoon Fork and the northern boundary of said State; such lands are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22, 1858. And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under joint resolution of March 2, 1861, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: *Provided*, That if the State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, *any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act, shall inure to and be held as a trust-fund for the benefit of the person or persons, respectively, whose titles shall have failed as aforesaid.*

This act is to be construed by the same rule of strict construction. It refers to three classes of lands not granted—

1. Lands released to the State under the resolution of 1861.
2. Lands sold or otherwise disposed of by the United States before the passage of this act.
3. Lands sold and conveyed by the State, the title to which has proved invalid.

The lands granted are:

1. Lands unsold or not otherwise disposed of, which in the settlement were called "lands in place," not before certified.
2. Indemnity lands for the lands where the title of the State had failed.

Up to that time the lands improperly certified were reserved from public sale. The first sale advertised was the proclamation of June 19, 1848, which only included the lands up to 83 N. and 26 W. This was revoked by Commissioner Young, in a letter of instructions to the register and receiver at Iowa City, under date of June 1, 1849. They were directed to withhold from sale all odd-numbered sections within five miles of the river and above the Racoon Fork.

From that time until 1856 the lands within the supposed grant were withheld. It was then claimed for the railroads entitled to lands whose routes crossed this reservation, and was reserved from sale.

In 1860, after it was decided that the grant did not extend above the Racoon Forks, it was reserved from public sale for the benefit of actual

settlers, grantees of the State. Their titles were confirmed by the joint resolution of 1861.

As the Navigation Company claimed that those lands passed to it under the same resolution, and the railway companies claimed under the act of 1856, the land remained "reserved from sale." The lands claimed were not, in the sense of the law, "public lands" mentioned in the act of 1856.

The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws. That they were so employed in this instance is evident from the fact that to them alone could the order withdrawing lands from pre-emption, private entry, and sale, apply. (*Newhall vs. Sanger*, 2 Otto, 762.)

Under the act of 1853, and the uniform practice of the government, settlers were entitled to go upon lands reserved as belonging to any grant, and to pre-empt the same "after the lands have been released from reservation in the same manner as if no reservation existed." After the 3d of March, 1853, it was not illegal to settle upon the lands in question. They had been conditionally certified without prejudice. (See *Newhall vs. Sanger*, 2 Otto, 763; *Huff vs. Doyle*, 3 Otto, 564.)

In 1867 it was decided that the lands in question were not granted to the railroad company, because they had been "reserved" prior to that time as part of another grant. In that case Wolcott's title was held valid on the alleged and admitted statement that the State had sold and conveyed this land in accordance with the second section of the act of 1846, and that Wolcott was a *bona-fide* purchaser to whom the title of the United States was released under the resolution of 1861.

Since the date of that decision the lands have been reserved from public sale, and the United States have brought no action or made any order to terminate this reservation, and the lands have never been released by any public notice of sale or instructions to the land officers to permit them to be sold by private entry by any officer of the general government authorized to give such notice or instructions. And this tract of 297,000 acres, the title of the State to which failed, and for which the State received indemnity lands, remains to-day reserved from public sale or private entry.

In *Sherman vs. Buick* (3 Otto, 216) it was held that when a settler had improved lands unsurveyed which on survey proved to be school sections, the State's patent to another party was void, and the remedy of the State was to locate indemnity lands.

In this case the State admitted that their title had failed to 25,487.87 acres located or settled upon while the grant was conceded not to extend above the Raccoon Fork. (See deed of 18th May, 1858, to the Navigation Company:)

And it is understood that among the lands excepted and not granted by the State to said company are 25,488.87 acres lying immediately above Raccoon Fork, supposed to have been sold by the general government, but claimed by the State of Iowa.

This bill asks that the remainder, for which the State obtained indemnity, shall be declared public lands; that the land officers may be empowered to receive proofs of pre-emption or homestead claims, and the settlers may have the full benefit of the act of March 3, 1853.

It is claimed by the opponents of the bill that all the questions that can arise between the settlers and the Des Moines Navigation Company have been passed upon, and with some little asperity it is publicly stated, and in the public prints, that the bill proposes to reverse decisions of the Supreme Court. The case of *Wolcott vs. The Des Moines Company* (5 Wall., 684) was a suit for damages for breach of warranty of the deed of

the company to Wolcott. In deciding the case the court said expressly on page 684:

The land in question is one of the sections thus selected and proved by the Secretary of the Treasury and duly certified by the governor of the State to the President according to the second section of the act, and was sold and conveyed among other parcels of land by the State to the defendants.

Whether this statement was true or not, it was made by the parties to the case, and on such a statement of fact it was held that the after-acquired title of the State inured to the grantee. Had Mr. Wolcott made the point that the Navigation Company acquired that title after the passage of the act of August 3, 1854, and that the land was not sold in accordance with the terms of the second section of the act of 1846, the decision, it is believed, would have been the reverse. But the point upon which Wolcott particularly relied was that the land had been granted under the act of 1856 for railroad purposes; and the court held that the lands in question were reserved and were not conveyed by the act of May 15, 1856, to any railroad company. This decision was made in the spring of 1867; but the question of the settlement between the State and the United States of all claims under the joint resolution of 1861 or the act of July 12, 1862, were not before the court.

*Williams vs. Baker* (17 Wall., 152) was a case of contest between a grantee of the Navigation Company and a grantee of the railroad company. It was sufficient for the decision in that case to hold, as was held in the Wolcott case, that the railroad company took no title under the act of 1856. In this case the settlers were not notified to intervene, but only the railroad companies claiming title under the act of 1856 (p. 151.)

The case of *Riley vs. Wells* was decided upon the ground that the land at the time the pre-emption was sought to be made was not liable to pre-emption; and the court followed the Wolcott case in deciding this.

The answer of Hannah Riley (p. 10, case of *Riley vs. Wells*) avers that she entered upon the land in the year 1854, and that she had held and had possession of the land by virtue of her right as pre-emptor and her patent more than ten years prior to the commencement of suit; that is, to the 1st day of February, 1859. She was beaten in the court below and the decree confirmed in the Supreme Court.

The *Homestead Company vs. The Valley Railroad Company* (17 Wall., 162, 163) was a contest between the grantee of the railway companies and the Valley Railroad, the Homestead Company claiming under the land grant of 1856, the Valley Railroad Company claiming under the act of July 12, 1862, the adjustment by the State May 21, 1866, and confirmed by the State on the 31st of March, 1868, and by Congress on the 3d of March, 1871.

Again, it was held that the railroad companies took no title under the act of 1856. The court says:

It is admitted in the record that the State has conveyed to the Des Moines Valley Railroad Company, one of the defendants to this suit, for good and valuable considerations performed by the company, all the land received by the State under the act in question July 12, 1862, except those only which had been conveyed by the State under the act of August 8, 1846, and the legislation pursuant thereto.

It was held that the railroad companies had no right to the indemnity lands provided for under the act of July 12, 1862, as they never had any title which proved invalid. It is also held that the certificate of the Secretary of the Interior, under the act of July, 1862, was not sufficient to pass a valid title to the State, but that further legislation was necessary. That the State of Iowa, having made an adjustment and

ratified it, the act not only ratified the adjustment, but granted all the lands passing under the act of July 12, 1862, to the Valley Road, and that Congress, with full knowledge that the legislature had parted with the land to the Valley Road, chose to confirm the title to the State and its grantees. That Congress had full power to grant the lands in place and the indemnity lands to be selected by the State to the Valley Railroad Company.

The settlers upon the 297,000 acres, conceded by the State to belong to the United States, or its grantees, were not parties to this suit. The case of Crilley *vs.* Burrows was decided at the same time adversely to Crilley, on the ground, as stated by Judge Davis, that it was "in no essential respect different from the preceding case."

The effect of the adjustment of 1866, so far as it relates to the rights of the Des Moines Navigation Company, or the rights of the settlers upon the public lands, has not been brought directly before the Supreme Court of the United States.

That act was approved March 3, 1871, and reads as follows:

That the title to the land certified to the state of Iowa by the Commissioner of the General Land Office under an act of Congress entitled "An act confirming a land claim in the State of Iowa, and for other purposes," approved July twelve, eighteen hundred and sixty-two, in accordance with the adjustment made by the authorized agent of the State of Iowa and the Commissioner of the General Land Office on the twenty-first day of May, anno Domini eighteen hundred and sixty-six, and approved by the Secretary of the Interior on the twenty-second day of May, anno Domini eighteen hundred and sixty-six, and which adjustment was ratified and confirmed by act of the general assembly of the State of Iowa approved March thirty-first, eighteen hundred and sixty-eight, be, and the same is hereby, ratified and confirmed to the State of Iowa and its grantees, in accordance with said adjustment and said act of the general assembly of the State of Iowa: *Provided*, That nothing in this act shall be so construed as to affect adversely any existing legal rights, or the rights of any party claiming title, or the right to acquire title to any part of said lands under the provisions of the so-called homestead or pre-emption laws of the United States, or claiming any part thereof as swamp lands.

It will be observed that the rights of settlers are protected in this act.

The settlement and adjustment of the grant of July 12, 1862, was conclusive upon the State of Iowa and its grantees, and no lands passed to the State except those certified under this adjustment. It must be construed in connection with the constitution of Iowa of 1857, which provided:

The general assembly shall not locate any of the public lands which have been, or may be, granted by Congress to this State, and the location of which may be given to the general assembly, upon lands actually settled without the consent of the occupant. The extent of the claim of the occupant so exempted shall not exceed three hundred and twenty acres." (Sec. 7, Art. 11, constitution of 1857, page 1004, revision of 1860.)

The bill is confined solely to the rights of settlers upon the 297,000 acres of land. The title of the State to the 297,000 acres having failed, the land belongs to the public domain, except so far as it has been settled by *bona fide* settlers under the homestead or pre-emption laws of the United States. This bill authorizes the Attorney-General of the United States to institute suits, and the settlers who have in good faith settled upon these lands to join in the suits to determine their titles.

The decisions heretofore given in cases where the settlers were not parties are not binding upon them. The cases where the settlers were parties, and were tried upon a statement of law and fact which did not embrace the question of the invalidity of the title of the Des Moines Navigation Company, are not an estoppel to new suits by other parties where a different state of facts may be shown. The rule of law is:

In all cases, therefore, when it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of

action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action. (*Cromwell vs. County of Sac*, 4 Otto, 353.)

It was stated in the argument before the committee that the persons who claim to be *bona fide* purchasers of the Navigation Company bought bonds of the Navigation Company which were secured by mortgage on these lands, and that they exchanged these bonds for the lands.

The mortgage was executed August 27, 1855, to Daniel B. St. John to secure the payment of bonds to be issued thereafter. The purchasers of the bonds had full notice that the certificate of Secretary Stuart was null and void under the acts of 1846 and August 3, 1854, and that they were not entitled to receive these lands.

The Navigation Company had no legal title that could be the subject of mortgage.

The contract was not a sale. (*Des Moines Nav. Co. vs. County of Polk*, 10 Iowa, 16).

The title of the grantees of the Navigation Company is not strengthened by the fact that the lands were mortgaged to secure the bonds they bought. (See *Leavenworth, &c., R. R. Co. vs. U. S.*, 2 Otto, 753.)

When an act granting railroad lands "made the construction of portions of the road a condition precedent to a conveyance of any other parcel by the State," held: "No conveyance in disregard of this condition could pass any title to the company." (*Farnsworth et al. vs. Minn. & Pac. R. R. Co.*, 2 Otto, 65; *Cedar Rapids & Missouri R. R. Co. vs. County of Sac*, 46 Iowa, 244-247; *Miller vs. Corbin*, 46 Iowa, 152.)

If the bill is passed, it will become the duty of the Attorney-General of the United States to bring suits in the name of the United States to test the title of persons claiming under the State.

If the courts decide the Navigation Company has no title under the joint resolution of 1861 or the act of 1862, the government can confer title on the settlers even where the former patents have been canceled. Where they have not been canceled, or where the parties hold pre-emption or homestead certificates, the settlers can intervene and have the void title of the Navigation Company set aside as a cloud upon their title.

Settlers are being driven from their homes on the very lands for which the government gave the indemnity, and the beautiful valley of the Des Moines for many years has been cursed with insecurity of land-titles more damaging than locusts or perpetual mildew. Something must be done to restore prosperity, peace, and contentment, and it is believed this measure furnishes the only remedy. Heretofore measures intended for the relief of this worthy class have been turned against them, working evil continually. If the Navigation Company (which has, it is believed, already received much more than it ever expended on the improvement), or its privies, without fraud, have vested rights, Congress has no power to disturb them. If otherwise, and the settlers or the government have the superior equity, as your committee believe they have, this measure will restore prosperity and happiness to the unhappy settlers, and in any event it will be a settlement of this vexed question, and bring peace; and your committee, with great unanimity, recommend the passage of the bill.



## SETTLERS ON DES MOINES RIVER LANDS.

MAY 31, 1880.—Ordered to be printed.

Mr. KETCHAM, from the Committee on the Public Lands, submitted the following as the

### VIEWS OF THE MINORITY:

[To accompany bill H. R. 1067.]

*The minority of the Committee on the Public Lands, to whom was referred a bill (H. R. 1067) to quiet the title of settlers on the Des Moines River lands, and for other purposes, have considered the same, and make the following report :*

This bill ought not to pass, for reasons of law and of fact which in the judgment of the minority of the committee, are conclusive.

1. The bill seeks to construe the act of Congress approved March 3, 1851, entitled "An act confirming the title to certain lands," as an act destroying the title to the lands in question instead of confirming it. That act may undoubtedly be repealed, but it is the province of the court to construe it. There is nothing doubtful or ambiguous in that act; and the effect of this bill is not to construe it, but to destroy its force.

2. This act purports upon its face to be an act to quiet the title of certain settlers on the Des Moines River lands. In truth and in fact, the settlers referred to never had any title to the lands in question; and the effect of the bill is to take away from non-residents of the State of Iowa, by act of Congress, lands which they have long owned and to which they have a perfect title, and transfer those lands to persons who never owned them, never paid for them, and never had any title to them or lien upon them.

3. The bill directs the Attorney-General to bring, or cause to be instituted, unnumbered lawsuits, in law or equity, to "protect the title of the United States" in lands to which the United States has no title and claims none, and to "remove all clouds from its title thereto."

There cannot be said to be any cloud upon the title of the United States in a case where the United States does not claim to have any title, and has none in fact.

The bill also provides that in any suit so instituted, any person or persons in possession of or claiming title to any of such lands, may unite with the United States in the prosecution of such suits.

This clause of the bill is very objectionable, because (1) there is no good reason why the United States should be made to bear the burden of litigations for the benefit of individuals; (2) there is no obstacle in the way of any private person conducting his own litigation in his own name; and (3) the questions of law involved in the title to these lands have been before the Supreme Court of the United States in twelve dif-

ferent actions, and in each case the decision has been adverse to the claims of the promoters of this bill. The Supreme Court has passed upon every phase of the questions involved, and it cannot be expected that a decision of the thirteenth cause, in that high court, would be any different from that of the twelve preceding cases.

The questions, therefore, which the promoters of this bill seek to raise and to have the court pass upon are all *res adjudicata*, and it is time litigation concerning these Des Moines lands was ended.

It becomes necessary, however, to make a statement of the facts as they exist in relation to these Des Moines lands.

On the 8th August, 1846, Congress passed the following act:

(Original grant, 9th U. S. S., page 77.)

AN ACT granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called), in said Territory, one equal moiety, in alternate sections, of the public land (remaining unsold, and not otherwise disposed of, incumbered or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SEC. 2. *And be it further enacted*, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvement shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sale shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SEC. 3. *And be it further enacted*, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States or persons in their service passing through or along the same: *Provided, always*, That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

SEC. 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the land hereby granted for the above purpose shall be and become the property of said State, for the purpose contemplated in this act and no other: *Provided*, The legislature of the State of Iowa shall accept the said grant for the said purpose.

Approved, August 8, 1846.

This grant was accepted by the State of Iowa by legislative act January 9, 1847.

Under this act of Congress, the President of the United States withdrew from sale all the lands now in controversy, so that no pre-emption or homestead rights could be made to them or to any of them.

Under this act, the officers of the United States certified lands to the State of Iowa until the amount of lands so certified above the Raccoon Fork was 271,000 acres or thereabouts.

The State of Iowa operated the Des Moines River improvement through a board of public works from 1847 to 1854; it sold about 318,000 acres of the grant and expended the money in this improvement.

In 1854 the legislature of Iowa incorporated the Des Moines Navigation and Railroad Company, and contracted with that company to finish or complete the improvement, then estimated to cost \$1,300,000, and

agreed to convey to it all the remaining lands which had theretofore been certified to the State and all that might thereafter be so certified.

This company entered upon the work and continued until May, 1858. It expended upon the improvement the sum of \$332,634.01. This amount is certified by the governor of the State. The certificate is in the words and figures following:

EXECUTIVE CHAMBER, IOWA,  
Des Moines, April 28, 1858.

To His Excellency JAMES BUCHANAN,  
*President of the United States:*

I, Ralph P. Lowe, governor of the State of Iowa, as required by act of Congress approved August 8, 1846, "granting certain lands of the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory," do hereby certify that there has been expended from time to time, prior to the date hereof, on the improvement of said river, as the work has progressed and the money has been required, under certain contracts made by the State of Iowa with the Des Moines Navigation and Railroad Company, the sum of three hundred and thirty-two thousand six hundred and thirty-four  $\frac{1}{100}$  dollars (\$332,644.04), and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress approved as aforesaid, there will be conveyed to said Des Moines Navigation and Railroad Company two hundred and sixty-six thousand one hundred and seven  $\frac{1}{100}$  acres (266,107  $\frac{1}{100}$  acres) of the land belonging to said grant, and which have been certified and approved to the State of Iowa under said act, for the prosecution of the improvement of said River Des Moines.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed, together with my signature.

[L. S.]

RALPH P. LOWE.

By the governor:

ELIJAH SELLS, *Secretary of State.*

There can be no question that Governor Lowe, by this certificate, addressed to the President of the United States, asserted \$332,644.04 to be the amount expended by the company. If there could be any question, Judge Nelson has settled it in his opinion in the case of Wolcott (5 Wallace, 681). The court construe that certificate, in that case, to assert that the company had expended \$332,634.01 on this work. There is no evidence to the contrary.

The following facts are quoted from the opinion of the Supreme Court in the case of Wolsey and the State of Iowa, against Chapman, decided in the Supreme Court of the United as of the October term, 1879—the opinion written by Chief Justice Waite—and may be deemed judicially established:

On the 17th of October, 1846, the Commissioner of the General Land Office requested the governor of the Territory to appoint an agent to select the land under the river grant, at the same time intimating that the grant only extended from the Missouri line to the Raccoon Fork of the Des Moines River. On the 17th of December, a few days before the admission of the State, the Territorial authorities designated the odd-numbered sections as the lands selected under the grant. The State accepted the grant in form by joint resolution of the general assembly approved January 9, 1847. On the 24th of February following, the State created "a board of public works," to whom were committed the work, construction, and management of the river improvement, and the care, control, sale, disposal, and management of the lands granted the State by the act of 1846. This board was organized September 22, 1847, and on the 17th of February, 1848, the Commissioner of the General Land Office, in an official communication to the secretary of the board, gave it as the opinion of his office that the grant extended throughout the whole length of the river within the limits of the State. On the 19th of June, 1848, without any notice of a revocation of this opinion, a proclamation was issued by the President putting in market some of the lands above the Raccoon Fork which would go to the State if the Commissioner was right in the construction he gave the grant. This led to a correspondence on the subject between the proper officers of the State and the United States, which resulted in the promulgation of an official opinion by the Secretary of the Treasury, bearing date March 2, 1849, to the effect that the grant extended from the Missouri line to the source of the river. In consequence of this opinion, the Commissioner of the General Land Office,

on the first of the following June, directed the registers and receivers of the local land offices to withhold from sale all the odd-numbered sections within five miles on each side of the river above the Raccoon Fork.

Afterwards, the State authorities called on the Commissioner of the General Land Office for a list of lands above the Raccoon Fork which would fall to the State under this ruling. The list was accordingly made out, and on the 14th of January, 1850, submitted to the Secretary of the Interior for approval; jurisdiction of matters of that kind having been before that transferred by law from the Treasury to the Interior Department. On the 6th of April, the Secretary returned the list to the Land Office with a letter declining to recognize the grant as extending above the Raccoon Fork without the aid of an explanatory act of Congress, but advised that any immediate steps for bringing the lands into market be postponed, in order that Congress might have an opportunity of acting on the matter if it saw fit.

On the 20th of July, 1850, the agent of the State having in charge the school lands and school fund gave notice at the General Land Office that he had selected the particular piece of land in controversy in this suit as part of the 500,000-acre grant under the act of 1841. Other lands coming within the river grant, if extended above the Raccoon Fork, amounting, in the aggregate, with this piece, to 12,813 $\frac{1}{16}$  acres, were included in a list of similar selections approved at the Land Department in Washington on the 20th of February, 1851. Two days afterwards, February 22, the board of public works of the State formally demanded of the Secretary of the Interior, for the river grant, all the alternate odd sections above the Fork. On the 26th of July the order of the Secretary of the Interior, under date of April 6, 1850, withholding the disputed lands from sale, was continued in force until the end of the approaching session of Congress, in order to give the State an opportunity of petitioning for an extension of the grant.

On the 29th of October, 1851, the Secretary of the Interior, after consultation with the President and his Cabinet, and pursuant to a decision there made, wrote the Commissioner of the General Land Office as follows:

"SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month.

"I have reconsidered and carefully reviewed my decision of the 26th July last, and in doing so find that no decision which I can make will be final, as the question involved partakes more of a judicial than an executive character, which must ultimately be determined by the judicial tribunals of the country, and although my own opinion on the true construction of the grant is unchanged, yet in view of the great conflict of opinion among the executive officers of the government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary. You will please, therefore, as soon as may be practicable, submit for my approval such lists as may have been prepared, and proceed to report for like approval lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork, as far as the surveys have progressed, or may hereafter be completed and returned."

The lists were made out accordingly, and the following endorsement put thereon by the Secretary:

"The selections embraced in the within list (No. 3) are hereby approved in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the land office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork."

No. 3 showed the vacant lands above the Raccoon Fork subject to the claim of the State, and included the particular parcel involved in this suit. On the 16th of March, 1852, the list was forwarded to the several local land offices as showing the land which fell to the State under the construction given the river grant by the Secretary of the Treasury March 2, 1849, and by the Secretary of the Interior October 29, 1851.

On the 20th of August, 1853, the school-fund commissioner of Webster County, under the authority of an act of the general assembly of the State of the 25th of February, 1847, entitled "An act to provide for the management and disposition of the school fund," contracted to sell to William T. Wolsey the land about which this suit arose. The purchase-money having been paid in full, the governor of the State, on the 20th of December, 1854, issued to Wolsey a patent in the form required to pass

title under such a sale. This patent purported on its face to have been granted as and for a conveyance of school lands.

On the 6th of January, 1854, after the contract of sale to Wolsey, but before the issue of the patent, the Commissioner of the General Land Office formally withdrew the approval by the Land Department of the selection of lands as part of the 500,000-acre grant which fell within the river grant, according to the opinion of the Secretary of the Treasury, March 2, 1849, and the Secretary of the Interior, October 29, 1851. On the 30th of December, 1853, the Secretary of the Interior approved to the State, "under the act of August 8, 1846, without prejudice to the rights, if any there be, of other parties," a list of the 12,813<sup>41</sup>/<sub>100</sub> acres erroneously approved 20th February, 1851, as lands selected under the act of 1841, "previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant."

Until the 17th of December, 1853, the State itself, through its board of public works, carried on the work of improving the river, paying the expense from the proceeds of the sales of the lands included in the river grant. A land office had also been established for the sale of these lands. On that day the State entered into a contract with one Henry O'Reilly to complete the work. This contract O'Reilly transferred, with the consent of the State, to the Des Moines Navigation and Railroad Company, a New York corporation, and on the 9th of June, 1854, in consequence of this transfer, a new contract was entered into between the State and the corporation, for the purpose of simplifying and more fully explaining the original contracts and agreements. By the new contract the State agreed to convey to the company "all of the lands donated to the State of Iowa for the improvement of the Des Moines River by act of Congress of August 8, 1846, which the said party of the second part [the State] had not sold up to the 23d day of December, 1853." This was the date at which it was supposed the sale of the lands could be stopped at the State land office after the contract with O'Reilly.

On the 15th of May, 1856, Congress passed an act (11 Stat., 9) granting to the State of Iowa, to aid in the construction of certain railroads, every alternate section of land designated by odd numbers for six sections in width on each side of each of the several roads. The granting clause of the act contained, however, the following proviso:

*"And provided further,* That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

In 1856 the Commissioner of the General Land Office decided not to certify any more lands to the State under the river grant, and thereupon the navigation company suspended work on the improvement. This led to a settlement between the State and the company, under the authority of a joint resolution of the general assembly for that purpose, passed March 22, 1858, by which the State agreed to convey to the navigation company all the lands contained in the river grant which had been approved and certified to the State by the General Government, "excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa by its officers and agents, prior to the 23d day of December, 1853, under said grant." Afterwards, May 3, 1858, the governor of the State executed to the company a deed conveying the lands now in controversy, with others, by a specific description of sections, townships, and ranges; and on the 12th of the same month he executed another deed, which purported on its face to have been made pursuant to the joint resolution of the general assembly authorizing the settlement with the company, and described the lands in the exact language of general description used in the resolution.

Chapman, the plaintiff below, has all the title to the lands involved in this suit which passed in this way to the navigation company.

At the December term, 1859, of this court, and during the month of April, 1860, in the case of *The Dubuque and Pacific Railroad Company vs. Litchfield*, 23 How., 66, it was decided that the river grant as originally made did not extend above the Racoon Fork, and thereupon, on the 18th of May, 1860, the Commissioner of the General Land Office sent to the registers and receivers of the local land offices a notice to be promulgated, as follows:

"Notice is hereby given that the lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant in that State, above the mouth of the Racoon Forks of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved for the time being from sale or from location by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

"This action is deemed necessary to afford time for Congress to consider, upon the

memorial or otherwise, the case of actual *bona fide* settlers holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper."

On the 2d of March, 1861 (12 Stat., 251), Congress passed the following joint resolution:

"JOINT RESOLUTION to quiet title to lands in the State of Iowa.

*"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be and the same is hereby relinquished to the State of Iowa."*

And on the 12th July, 1862 (12 Stat., 543), the following act was passed:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands to the Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Forks and the northern boundary of said State; such lands are to be held and applied in accordance with provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa approved March 22, 1858; and if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March 2, 1861, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: *Provided*, That if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to and be held as a trust fund for the benefit of the person or persons, respectively, whose titles shall have failed as aforesaid."*

After the passage of the joint resolution of March 2, 1861, the Commissioner of the General Land Office called on the governor of the State for a list of the tracts of land "held by bona-fide purchasers of the State of Iowa" on that date. In response to this request, the governor and land commissioner of the State, on the 20th of November, 1862, furnished the list required, and, among others, included the tracts granted to the navigation company on the settlement made with that company under the joint resolution of March 22, 1858. This list was filed in the General Land Office December 1, 1862.

On the 30th of March, 1866, an act was passed by the general assembly of Iowa providing for the adjustment of certain land claims with the general government. By this act Josiah A. Harvey, the register of the State land office, was appointed a commissioner to adjust the matters in dispute, and especially the excess of land which had been certified to the State above what it was entitled to receive under the act of September 4, 1841, and the lands falling due under the joint resolution of March 2, 1861, and the act of July 12, 1862.

This act contained the following section:

*"Sec. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interests of the State, and he is hereby authorized to adjust the said excess of the 500,000-acre grant by permitting the United States to retain, out of the indemnity land falling to the State under said act of Congress of July 12, 1862, an amount equivalent to such excess: *Provided*, That nothing herein contained shall be construed to be a relinquishment of the claim of the State under the said 500,000-acre grant to the 12,813 $\frac{1}{4}$  acres selected as a part of such grant and subsequently rejected from a supposed conflict with the act of Congress approved August, 1846, known as the Des Moines River grant; and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000-acre grant, and a confirmation of the title of the State thereto, as a part of such grant."*

Under this authority, an adjustment was had with the United States, by which it appeared that the State was entitled to 558,004 $\frac{3}{4}$  acres, under the river grant, and that under the 500,000-acre grant, it had received certificates for 22,660 $\frac{7}{16}$  acres more than it was entitled to if the 12,813 $\frac{1}{4}$  acres, also certified under the river grant, was not included, and 35,473 $\frac{1}{16}$  if it was. The excess was charged to the account of the

river grant, and a balance struck accordingly. The navigation and railroad company was not a party to this settlement. The adjustment was ratified by an act of the general assembly of the State passed March 31, 1868.

At the December term, 1866, of this court, it was decided, in the case of *Wolcott vs. Des Moines Company*, 5 Wall., 681, that the lands included in the river grant above the Fork, as finally settled by Congress, did not pass to the State for the benefit of the railroad companies under the act of 1856, because, at the time of the passage of that act, the lands were reserved for the purpose of aiding in the improvement of the Des Moines River, and, therefore, fell within the proviso limiting the grant to lands not so reserved.

At the December term, 1869, of this court, it was decided, in the case of *Riley vs. Wells*, No. 397, on the docket of the term, but not reported, that the lands above the Raccoon Fork were so far "reserved" by the action of the officers of the United States as not to be subject to pre-emption in 1855, under the tenth section of the act of 1841.

On the 3d of March, 1871, Congress passed an act (16 Stat., 583) ratifying and confirming to the State of Iowa and its grantees the title to the lands, in accordance with the adjustment made in 1866; but expressly provided "that nothing in this act contained shall be so construed as to affect adversely any existing legal rights, or the rights of any party claiming title, or the right to acquire title, to any part of said lands under the provisions of the so-called homestead or pre-empted laws of the United States, or claiming any part thereof as swamp lands."

At the December term, 1872, of this court, after full consideration, the cases of *Wolcott vs. Des Moines Company*, and *Riley vs. Wells*, were distinctly affirmed in *Williams vs. Baker* (17 Wall., 144); and in *Homestead Company vs. Valley Railroad Company* (17 Wall., 152), it was said to be "no longer an open question that neither the State of Iowa, nor the railroad companies for whose benefit the grant of 1856 was made, took any title by that act to the lands claimed to belong to the Des Moines River grant of 1846, and that the joint resolution of 2d of March, 1861, and act of July 12, 1862, transferred the title from the United States and vested it in the State of Iowa for the use of its grantees under the river grant."

The State voluntarily made itself a party to this suit for the purpose of defending its title to the lands in controversy as part of its school lands. An act of the general assembly was passed March 12, 1874, authorizing this to be done.

Upon this state of facts the court below granted the relief asked by the bill and sustained the title of Chapman. To reverse that decree this appeal was taken.

The following propositions were relied upon in the argument for the appellants:

1. That the lands in question were not "reserved" lands within the meaning of the exception in section 8 of the act of 1841.
2. That Chapman, claiming as he did under a patent from the State later in date than that to Wolsey, cannot impeach Wolsey's title in this action.
3. That Wolsey was such a *bona fide* purchaser from the State that the grant of Congress under the joint resolution of March 2, 1861, enured to his benefit.
4. That as the lands had been sold by the State previous to December 23, 1853, no title passed to the Des Moines Navigation and Railroad Company under the settlement made upon the authority of the joint resolution of the general assembly of March 23, 1858; and—
5. That by the adjustment and settlement between the State and the United States in 1866, the title of the State under 500,000-acre grant, and as part of the school lands, was confirmed.

These several propositions will be considered in their order.

1. As to the right of the State, on the 20th of February, 1851, to select these lands as part of the 500,000-acre grant.

It has been settled in this court that the title of the Des Moines Company is good as against the State and railroad companies under the railroad grant of 1856, and as against pre-emptioners after 1855 under the act of 1841. We are not asked to disturb these rulings, and should not be inclined to do so if we were. It is contended, however, that the language used in the eighth section of the act of 1841, defining the reservation, is so different from that of the tenth section, under consideration in *Wells vs. Riley*, and from that of the act of 1856, involved in *Wolcott's* case and the cases reported in the 17th Wallace, as to render our former decisions of no controlling authority on the question now to be determined. We do not so understand the effect of those decisions. Whatever might be the force of such an argument if the cases involving the act of 1856 stood alone, it seems to us impossible to distinguish the question now presented from that disposed of in *Riley vs. Wells*. In that case the language under consideration was, "lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes," and in this, "any public land, except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States." In the act of 1856 the corresponding language is, "any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by com-

petent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever."

It is conceded that the lands in controversy were reserved from sale by competent authority when the selection was made under the act of 1841. They were reserved also in consequence of the act of 1846. The proper executive department of the government had determined that, because of doubts about the extent and operation of that act, nothing should be done to impair the rights of the State above the Raceoon Fork until the differences were settled, either by Congress or judicial decision. For that purpose an authoritative order was issued, directing the local land officers to withhold all the disputed lands from sale. This withdrew the lands from private entry, and, as we held in *Riley vs. Wells*, was sufficient to defeat a settlement for the purpose of pre-emption while the order was in force, notwithstanding it was afterwards found that the law by reason of which this action was taken did not contemplate such a withdrawal. This, it is agreed, settles the present case, unless that decision resulted from the addition of the words "reserved for saline or for other purposes," which appear in the tenth section and not in the eighth.

The object of all interpretation is to ascertain the intent of the law-makers—to get at the meaning they wished their language to convey. A critical examination of particular words is never necessary except in cases of doubt. Sections eight and ten are parts of the same act. By one, a grant of public lands to certain States for certain purposes was provided for, and by the other pre-emption rights were given to individual citizens. Both had reference to public lands, and gave the respective beneficiaries the power of making their own selections. There seems to be no good reason why the selections of the pre-emptor should be restricted within narrower limits than those of the State, and we cannot believe it was the intention of Congress to give a State the power to take lands under section eight, which had actually been reserved by the United States for any purpose whatever. It is true in that section only reservation by a law of Congress or the proclamation of the President are specially spoken of, but it must have been the intention to include in this all lawful reservations. In the tenth section a reservation by treaty is specially mentioned, but we can hardly believe it would be seriously contended that, under the eighth section, a State could select lands reserved by a treaty because the word treaty was omitted in that section.

The truth is, there can be no reservation of public lands from sale except by reason of some treaty, law, or authorized act of the executive department of the government; and the acts of the heads of departments, within the scope of their powers, are in law the acts of the President. In *Wilcox vs. Jackson*, 13, Pet., 498, the question was directly presented whether a reservation from sale by an order from the War Department was a reservation "by order of the President," and the court held it was. The language of the statute then under consideration was (p. 511) "or which is reserved from sale by act of Congress or by order of the President, or which may have been appropriated for any purpose whatever," and in the opinion of the court it is said (p. 513): "Now, although the immediate agent in requiring this reservation was the Secretary of War, yet we feel justified in presuming that it was done by the approbation and direction of the President. The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the War Department. Hence we consider the act of the War Department in requiring the reservation to be made, as being in legal contemplation the act of the President; and consequently that the reservation thus made was, in legal effect, a reservation made by order of the President, within the terms of the act of Congress." That case is conclusive of this, unless the word "proclamation," as used in the present statute, has a signification so different from "order" in the other as to raise a material distinction between the two cases. We see no such intention on the part of Congress. A proclamation by the President, reserving lands from sale, is his official public announcement of an order to that effect. No particular form of such an announcement is necessary. It is sufficient if it has such publicity as accomplishes the end to be attained. If the President himself had signed the order in this case, and sent it to the registers and receivers who were to act under it, as notice to them of what they were to do in respect to the sales of the public lands, we cannot doubt that the lands would have been reserved by proclamation within the meaning of the statute. Such being the case, it follows necessarily from the decision in *Wilcox vs. Jackson* that such an order sent out from the appropriate executive department in the regular course of business is the legal equivalent of the President's own order to the same effect. It was, therefore, as we think, such a proclamation by the President reserving the lands from sale as was contemplated by the act. This being the case, under our former decisions, no title passed to the state by the approval of the selection of the lands in dispute under the act of 1841. Being lawfully reserved from sale at the time of the selection, they were not included in the grant which that act provided for.

2. As to the right of Chapman to question Wolsey's title.



Of this we entertain no doubt. If the state had no title when the patent issued to Wolsey, he took nothing by the grant. No question of estoppel by warranty arises, neither does the after-acquired title enure to the benefit of Wolsey, because when the United States made the grant in 1861 it was for the benefit of *bona-fide* purchasers from the state, under the grant of 1846. This is evident as well from the tenor of the joint resolution of 1861 as from the act of 1862. The relinquishment under the joint resolution is of all the title which the United States retained in the tracts of land above the Racoon Fork "which have been certified to said State improperly by the Department of the Interior as part of the grant by the act of Congress approved August 7, 1846, and which is now held by *bona-fide* purchasers under the State of Iowa"; and by the act of 1862 the lands are in terms to be held and applied in accordance with the provisions of the original grant. The legislation, being in *pari materia*, is to be construed together, and manifests most unmistakably an intention on the part of Congress to put the State and *bona-fide* purchasers from the State just where they would be if the original act had itself granted all that was finally given for the river improvement. The original grant contemplated sales by the State in execution of the trust created, and the *bona-fide* purchasers referred to must have been purchasers at such sales. This being so, the grant when finally made enured to the benefit of Chapman rather than Wolsey. Neither took title from the State at first, and as the final grant from the United States was in legal effect to Chapman or his grantors, he has the right to have that fact declared by a judicial decision against Wolsey, who sets up his adverse claim.

3. As to the alleged *bona-fide* purchase of Wolsey.

This has been substantially disposed of by what we have already said. He purchased under the school-land grant. His patent so in terms declares. Consequently he cannot be a purchaser under the river grant, to confirm which, as has been seen, the legislation of 1861 and 1862 was had.

4. As to the adjustment of 1866.

We are clearly of the opinion that this adjustment settled no rights as between any other parties than the State and the United States. The conflicting claimants were not parties to that settlement. The agent of the State was instructed not to relinquish the claim of the State under the school-land grant, and he did not do so. The United States simply applied themselves to the adjustment of quantities under all the grants, and whenever they did speak were careful to say that nothing which was done should be construed as affecting adversely any existing rights. The result was to leave the whole question to the ultimate determination of the courts.

5. As to the right of the governor to convey the lands in question to the Des Moines Company under the joint resolution of March 22, 1858, authorizing a conveyance upon settlement with the company.

The original contract between the State and the company contemplated a conveyance of all the river-grant lands not sold by the State on the 23d of December, 1853. This should be construed in the light of the fact that the act making the river grant provided for sales of the granted lands to furnish the means of making the required improvement, and if this contract stood alone we should have no hesitation in holding that the sales referred to were such as had been made in the execution of the trust under which the lands were held, but if there could be any doubt on that subject, the resolution which authorized the settlement removes all grounds for discussion. By that resolution, all the lands which had before that time been approved and certified to the State under the river grant were to be conveyed to the company, excepting such as had been sold or agreed to be sold by the officers of the State prior to December 23, 1853, "under said grant." The land now in controversy had been so certified, and it had also been sold under that grant. Therefore, the governor was expressly authorized to include it in his conveyance.

This disposes of all the questions urged upon our consideration, and the decree of the court below is consequently affirmed.

It is considered proper to give the entire opinion in this case, because the case is an important one, not only so far as it settles the facts in relation to the Des Moines lands, but also because it reaffirms the title of the non-residents of Iowa, whose title is sought to be affected by this bill.

Notwithstanding this abstract of the facts of the case, it is necessary that some of the leading documentary evidence should be presented *in extenso*.

In 1858 it was deemed best by the State to stop the work and settle with the navigation company.

To carry that purpose into effect, the legislature of Iowa passed the following joint resolution:

JOINT RESOLUTION of the legislature of Iowa, approved March 22, 1858, authorizing an abandonment of the contract with the navigation company, and a settlement with said company.

Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and whereas disagreements and misunderstandings have arisen, and do now exist, between the State of Iowa and said company, and it being conceived to be to the interest of all parties concerned to have said matters, and all matters and things between said company and the State of Iowa, settled and adjusted: Now, therefore,

*Be it resolved by the general assembly of the State of Iowa,* That for the purpose of such settlement, and for that purpose only, the following propositions are made by that State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company; and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress approved August 8, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the general government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said company, or its assignees, shall have right to all of said lands as herein granted to them, as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the general government, but at the costs and charges of said company; and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from all claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are 25,487.87 acres, lying immediately above Racoon Fork, supposed to have been sold by the general government, but claimed by the State of Iowa.

And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description, prepared for or intended for the construction of locks or dams in said improvement, whatsoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature, except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date, beyond the percentage retained from the contractors under their agreements; and the said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

The said company hereby agree to pay the State the sum of \$20,000, which sum shall be paid to the order of the commissioner of the Des Moines River improvement (as fast as he may require the same, to liquidate existing liabilities against said Des Moines river improvement), on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement, not exceeding in amount the sum of \$11,000, which are now due and unpaid, are to be received in part payment of the sum of \$20,000: *Provided*, That no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant: *And provided also*, That if Congress shall permit a diversion of the lands of the Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all liabilities aforesaid against said improvement, and the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided further*, That if the said Des Moines Navigation and Railroad Company shall ratify

and accept these propositions for a contract by filing a written acceptance thereof in the office of the Secretary of State within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto.

This resolution was carefully reported upon by a committee of the Iowa legislature, of which committee Hon. C. C. Carpenter, since governor of the State of Iowa, and now a member of the House of Representatives from Iowa, was a member.

The Des Moines Navigation and Railroad Company ratified and accepted the proposition embodied in this joint resolution within the time and in the manner therein specified. The company paid to the State the sum of \$20,000 in cash, and released and conveyed to the State the dredge-boat and materials in said resolution mentioned, which were of the cash value of more than \$100,000, and in all respects, on its part, fully complied with all the terms of settlement in said joint resolution provided.

By another act of the general assembly of Iowa of 22d March, 1858, a grant was made to the Keokuk, Des Moines and Minnesota Railroad Company of all the remaining lands claimed by the State lying above the forks and not granted to the Navigation Company.

This resolution of the Iowa legislature was deliberately passed. It is a resolution which the legislature of Iowa was competent to pass. Acting under the authority of that resolution, the governor of the State executed to the Des Moines Navigation and Railroad Company, on the 18th day of May, 1858, a deed conveying all of the lands remaining which had been certified to the State of Iowa by the United States, including about 213,000 acres of land above the Raccoon Fork. That deed is in the words and figures following.

*Copy of general deed.*

This indenture, made this 18th day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of a joint resolution of the general assembly of the State of Iowa approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the Des Moines Navigation and Railroad Company the following described lands, to wit: All lands granted by an act of Congress approved August 8th, 1846, to the Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the general government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company, or its assigns, shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the general government, but at the costs and charges of said company; and the State to hold all the balance of said lands, and all rights, powers, and privileges, under and by virtue of said grant, entirely released from any claim by or through said company. And it is understood that among the lands excepted and not granted by the State to said company are 25,498.87 acres lying immediately above Raccoon Fork, supposed to have been sold by the general government, but claimed by the State of Iowa:

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation and Railroad Company, their successors and assigns, forever, in fee simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

[L. S.]

By the governor:

ELIJAH SELLS, *Secretary of State,*

By JNO. M. DAVIS, *Deputy.*

RALPH P. LOWE.

In that same year, 1858, the Des Moines Navigation and Railroad Company conveyed a large portion of those lands to persons residing out of the State of Iowa and in other States, who paid for them their full value at that time. Among these purchasers were General John H. Martindale, of Rochester, N. Y., who bought 1,000 acres, and has held them and paid taxes on them to the State of Iowa for more than 20 years; the late Roswell S. Burrows, of Albion, N. Y., purchased several thousand acres of land, of which his estate now owns 15,000 acres; John Stryker, of Rome, N. Y., and a large number of other persons, some of whose names are given below, were purchasers of those lands, viz:

Peter Carroll, of Canada; Mr. Dibble, of Detroit; Mr. Kibbee, Mr. Speed, of Detroit; Mr. Tregent, of Detroit; Wittenman, of Detroit; Sanger, of Detroit; Stuart, of Detroit; Plumb, of Albany; Kenrich, of Albany; Pumpelly, of Albany; Washington Hunt, of Lockport; George W. Rogers, of Lockport; Van Valkenburg, of Lockport; Ten Eyck, of Cazenovia; E. C. Litchfield, of Cazenovia, N. Y.; Wendell, of same place; William M. Burr, of same place; M. B. Anderson, of Rochester; Davenport, of Bath; Tracy, of Buffalo; Taft, of same place; McAlpine, of New York; E. B. Litchfield and Calvin Burr and William B. Welles and C. C. Clark and Oliver Hunt, all of the same place; Armstrong and Huntington and Boardman & Walsh, of Rome, N. Y.; Andrew Dexter, George F. Parsons, W. O. Johnson, George R. Thomas, of Utica. There are altogether 300 to 400 of these purchasers.

The foregoing deed is a general deed given by the State of Iowa to the Des Moines River Navigation and Railroad Company; but there were several other deeds of the same form conveying the lands in the different counties, which contained specific descriptions of the lands, all dated in the month of May and a few days prior to the general deed.

The general deed was made so as to convey any lands which might have been omitted in the descriptions in the other deeds.

The grantees of the Des Moines River Navigation Company went into possession of the lands purchased, and have held undisturbed possession ever since by themselves and their grantees. There are over 6,000 families now on those lands who obtained their title from the State of Iowa through the Des Moines Navigation and Railroad Company and its grantees, and whose title overthrows this bill.

In 1859, as stated by Chief Justice Waite, the Supreme Court of the United States, in the Litchfield case, decided that the grant to the State of Iowa of August 8, 1846, did not extend above the Raccoon Fork.

This decision was very unexpected to the people of the State of Iowa and disastrous to the title of the grantees of the State. The representatives of the State of Iowa in the Senate and the House of Representatives besought Congress to grant to the State of Iowa the lands so conveyed by the State, in order that the conveyance of the State of the 371,000 acres above the Raccoon Fork might be made valid and effective, and the grantees of the State obtain the title which the State intended to give when it executed the said deeds.

Accordingly, on the 2d day of March, 1861 (12 Stat., 251), Congress passed a joint resolution in these words:

JOINT RESOLUTION to quit title to lands in the State of Iowa.

*Resolved, &c.*, That all the title which the United States still retain in the tracts of land along the Des Moines River and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress approved August 8, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

This resolution has been held to be an original grant of the lands now in controversy for the benefit of the grantees of Iowa, precisely the same as if there never had been any previous attempt to grant these lands.

That the grant of this joint resolution inured to the benefit of the grantees of the State does not admit of question. This has been expressly decided by the Supreme Court. The contract between the State and the company provided that the lands "were secured to the company." The deeds undertook to "*sell, grant, bargain, and convey*" these lands, and that *the company and their successors and assigns should hold them forever in fee-simple.*

This, though not in form a warranty deed, was such as the State executed in all such cases or as to all these grants, and had the effect of passing not only the title which the State *then had, but all that it might acquire.* It is said that this cannot be so, since this was not a deed of warranty. We answer that, however this might be by the common law, all doubt is removed under the Iowa statute, and especially, as in this instance, where a deed is made by a sovereign State.

The code of that State (1851) in force when these deeds were made provided:

§ 1201. Every conveyance of real estate passes *all the interest* of the grantor therein unless a contrary intent can be inferred from the terms used.

§ 1202. When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee.

These sections were re-enacted in the Code of June of 1860, and were in force in 1861-'62.

It will be seen that the statute refers to and includes *all deeds*, not warranty deeds alone, but "when a deed purports," &c., and as a consequence when the act of 1861 was passed it had the effect, *ex proprio vigore*, of making good, and passed to the company, its successors, and assigns, all the title which the State took thereby or had before that time, and which it had conveyed by the deeds aforesaid.

That in this we are right, see Van Orman *vs.* McGregor (23 Iowa, 400); also, Wolcott *vs.* Des Moines N. & R. R. Co. (5 Wallace, 681), where Nelson, J., speaking for the court, says:

For, although the State possessed no title to the lot in dispute at the time of the conveyance to the Des Moines N. & R. R. Co., yet, having an after-acquired title by the act of Congress, it would inure to the benefit of the grantees, and so in respect to these conveyances to the plaintiff. *This is in accordance with the laws of Iowa.*

Before referring to the cases in the Supreme Court, it is proper to state, that of the 371,000 acres certified to the State above Racoon Fork, the State had conveyed and sold to individuals 57,919 acres before it made its conveyances to the Navigation Company, and these individuals, after the decision of 1859, were in the same situation as to their title as were the grantees of the Des Moines Navigation and Railroad Company. The joint resolution of 1861 operated to confirm their title, and such title has never been questioned since.

It is stated in the majority report that the number of settlers is 800 to 1,000. This is evidently a mistake. During the Forty-third Congress a commission was appointed by the President which investigated the question, and this commission reported that the whole number of settlers is 344. (See Senate Report, Forty-third Congress, second session, No. 609, page 2. See Ex. Doc. No. 25, Forty-third Congress.)

Mr. John Browne, agent of the grantees of the Navigation Company,

in a letter addressed to the Hon. Addison Oliver, of the House of Representatives, dated 23d July, 1866, says:

*The total claimants of all kinds are only 345, and of these upwards of 270 have bought their claims from the Navigation Company or its grantees, so there are only about 75 of these claimants who are asking Congress to disturb and put again into litigation titles to the homes of upwards of 6,000 citizens of Iowa. And these 75 old claimants, put under the ordinary form of examination followed in proving of pre-emption claims, would be reduced to 6 or 10 persons. This number may be increased by other persons who are now going into possession of these lands making claims under the encouragement of this proposed legislation, and who some day will urge their demands upon the attention of Congress.*

This statement of Mr. Browne is without doubt correct.

Senator Pratt, in a report from the Committee on the Public Lands of the Senate in the Forty-third Congress, states that the number of settlers, or beneficiaries as they are termed in his report, is 344.

These settlers squatted upon some of these lands and got no title except a squatter's title. They paid nothing for the lands, they have paid no taxes, they have paid nothing for the use of the lands they have occupied, and in many instances they have stripped the land of its valuable timber. They have no right upon which they can get any standing in a court of law or equity; and their pretensions that the joint resolution of 1861 and the deeds of the State of Iowa constitute any cloud upon any title which they possess, is without foundation.

But several litigations have from time to time been prosecuted involving such title, and in each instance such litigations have been determined adversely to the squatters or settlers.

None of the settlers, so far as known, got upon these lands prior to 1861, except Riley, who took possession of his lot in 1855, but did not offer any proofs till 1862.

As far back as 1867 the supreme court of the State of Iowa, in the case of *Stryker vs. Polk County*, decided that the Des Moines Navigation Company was a *bona fide* purchaser from the State of the lands in question. (See 22 Iowa Rep., 134.)

It appears that Stryker was a purchaser from the Des Moines Navigation Company, and held title under the State's deed of 3d May, 1858. He sought to enjoin the county from enforcing the taxes of 1859 and subsequent years against his lands.

The decision of the court appears to have been entered at the April term, 1867, and the injunction was refused on the ground that the lands were taxable for 1859.

The court say—

That Congress, in 1861, made not a new grant, but, for the purpose of giving effect to and carrying out the construction placed upon the original act, relinquished to the State, for the use of *bona fide* purchasers, all the interest which the United States still retained. \* \* \* Plaintiff held under a deed from the State; the State claimed under the original grant, the lists being duly certified; he was a *bona fide* purchaser, and the title still retained by the United States was relinquished to the State for his use. The subsequent action on the part of the State and Federal authorities was necessary, that the proper officers might know the specific tracts held by *bona fide* purchasers. The United States had already, in the manner contemplated by the act of 1846, parted with the title. The State, upon the faith of the title thus acquired, had sold and conveyed, and the joint resolution was intended, as a matter of justice and right, to secure and quiet *bona fide* purchasers in their titles, unsettled as they were by the decision of the supreme court.

This reference is to the case of *Litchfield vs. Dubuque and Pacific Railroad Company* (23 Howard, 66).

This doctrine is affirmed in 40 Iowa Rep., p. 66.

Thus the highest court in the State of Iowa, in two well-considered cases, has decided that the Des Moines Navigation and Railroad Company and its grantees, were *bona fide* purchasers and holders of these lands.

These two propositions are established judicially in the cases of *Wolcott vs. The Des Moines Navigation and Railroad Company* and *The Des Moines Navigation and Railroad Company vs. Burr* (5 Wallace's Reports, page 681), decided by the United States Supreme Court at the December term, 1866. Wolcott sued the company for breach of covenant. He had purchased the east one-half of section 17, township 88 north, range 27 west, from said company, and taken its deed. In his complaint he alleged that his title had failed. The court held that his title was good. The land is above the Raccoon Fork, and in a section listed to the State "improperly" in 1851 or 1852. The court, in its decision, has well and amply recited the law and the facts. We quote the following:

Although the State possessed no title to the lot in dispute at the time of the conveyance to the Des Moines N. and R. R. Co., yet, having an after-acquired title by the act of Congress, it would inure to the benefit of the grantees, and so in respect to these conveyances to the plaintiff. This is in accordance with the laws of Iowa.

At pages 688 and 689 the court said:

It has been argued that these lands had not been reserved by competent authority, and hence that the reservation was nugatory. As we have seen, they were reserved from sale for the special purpose of aiding in the improvement of the Des Moines River—first, by the Secretary of the Treasury, when the land department was under his supervision and control, and again by the Secretary of the Interior, after the establishment of this department, to which the duties were assigned, and afterward continued by this department, under instructions from the President and Cabinet. Besides, if this power was not competent, which we think it was ever since the establishment of the land department, and which has been exercised down to the present time, the grant of 8th of August, 1846, carried along with it by necessary implication not only the power but the duty of the Land Office to reserve from sale the lands embraced in the grant. Otherwise its object might be utterly defeated. Hence, immediately upon a grant being made by Congress for any of these public purposes to a State, notice is given by the Commissioner of the Land Office to the registers and receivers to stop all sales, either public or by private entry. Such notice was given the same day the grant was made, in 1856, for the benefit of these railroads. That there was a dispute existing as to the extent of this grant of 1846 in no way affects this question. The serious conflict of opinion among the public authorities on the subject made it the duty of the land officers to withhold the sales and reserve them to the United States till it was ultimately disposed of.

It should be stated, also, in connection with this proviso, that the improvements of this river were in progress at the time of the passage of the act of 1856, and had been for years, but was suspended soon after on account of the refusal of the Land Department to certify any more sections under the act of 1846; and, as appears from the certificate of the governor of Iowa, the sum of \$332,034.04 had already been expended by these defendants under their contract.

This decision was announced in the spring of 1867.

The unreported case of *Riley vs. Wells* was determined at the December term, 1869, of the same court. Riley claimed under the pre-emption laws the northwest quarter of section 33, township 89 north, range 28 west, and, on proof of settlement, obtained an entry and patent, dated October 15, 1863, from the United States. Welles held title under the Des Moines Navigation and Railroad Company, and filed his bill to set aside the patent to Riley. The following is the whole of this opinion:

Supreme Court of the United States, December term, 1869.

HANNAH RILEY, APPELLANT, }  
 vs. } No. 397.  
 WILLIAM B. WELLES.

Appeal from the circuit court of the United States for the district of Iowa.

Mr. Justice NELSON delivered the opinion of the court:

This is an appeal from the circuit court of the United States for the district of Iowa. This case is not distinguishable from that of *Wolcott vs. The Des Moines Company*,

(5 Wall., 681). Welles, the plaintiff below, derives his title by deed from this company, the same as Wolcott in the former case. The suit in that case was brought to recover back the consideration-money from the Des Moines Company, the grantors, on the ground of failure of title. The court held that Wolcott received a good title to the lot in question under his deed.

In that case it was insisted that the title was not in the Des Moines Company, but in the Dubuque and Pacific Railroad Company.

In the present case the defendant claims title under, and in pursuance of, the pre-emption act of September 4, 1841.

Her husband took possession of the lot in 1855, and she was permitted by the register to prove up her possession and occupation May, 1862. The patent was issued October 15, 1863.

It will appear from the case of Wolcott *vs.* The Des Moines Company that the tract of land of which the lot in question was a part had been withdrawn from sale and entry on account of a difference of opinion among the officers of the land department as to the extent of the original grant by Congress of lands in aid of the improvement of the Des Moines River, from the year 1846 down to the resolution of Congress of March 2, 1861, and the act of July 12, 1862, which acts we held confirmed the title in the Des Moines Company. As the husband of the plaintiff entered upon the lot in 1855 without right, and the possession was continued without right, the permission of the register to prove up the possession and improvements, and to make the entry under the pre-emption laws, were acts in violation of law and void, as was also the issuing of the patent.

The reasons for this withdrawal of the lands from public sale or private entry are stated at large in the opinion in the case of Wolcott *vs.* The Des Moines Company and need not be repeated. The point of reservation was very material in that case, and we have seen nothing in the present one, either in the facts or in the argument, to distinguish it.

The decree below affirmed.

The next case is that of George Crilley, and is as follows :

Supreme Court of the United States, December term, 1872.

GEORGE CRILLEY, APPELLANT, }  
*vs.* } No. 129.  
 ROSWELL S. BURROWS.

Appeal from the circuit court of the United States for the district of Iowa.

Mr. Justice DAVIS delivered the opinion of the court :

This case is controlled by the recent decisions of this court relating to the Des Moines River land litigation, and especially by the decision in Riley *vs.* Welles. That case is in no essential respect different from this, and we need not, therefore, repeat the argument by which the judgment there was supported.

In both cases the entries were made and patents issued after plaintiff's title accrued under the joint resolution of 1861, and in both cases the settlements were made in 1855.

It is argued that Crilley can defend his possession under the statute of limitations of Iowa, but this is not so, because the statute does not begin to run so long as the title is in the State or the United States, and his proof of *pre-emption was never offered until after the United States parted with its title to the State*. It is true that he had prior to this applied to enter the land with gold and to file a declaratory statement, but he took nothing by these applications, because they were denied by the land officers.

Equally ineffectual to sustain his defense is the act of Congress of 3d of March, 1853 (10 Statutes, page 244), to extend pre-emption rights to certain lands therein named.

It is plain that the proviso to the section which he relies on for his protection relates to grants by foreign governments of lands within territory subsequently acquired by the United States, and has, therefore, no application to this case. But if it were otherwise, the right of pre-emption did not attach until after the lands were released from reservation. We have already decided that the Des Moines River lands were reserved from sale; and this reservation continued until Congress, by the joint resolution of 1861, released to the State for the use of its grantees the legal title still in the general government, without any saving clause in behalf of settlers or those who might claim under the pre-emption laws of the United States. This may have been a "*casus omissus*" on the part of Congress, but this court has no power to supply the omission. We are unable to see in this case any principle which has not been already passed upon by this court in some one of the suits relating to this protracted litigation.

The decrees of the circuit court is affirmed.



*Williams vs. Baker, and C. R. & M. R. R. Co. vs. Martindale and others* (17 Wallace, page 144).

These were suits in chancery, and Miller, J., for the court, goes over the whole ground, examines most fully and ably this long-contested title, and, among other things, says:

This decision (*Litchfield vs. D. & R. R. Co.*, 23 Howard, 66, decided in 1860), in which the Supreme Court held that the grant did not extend above the Raccoon Fork, was accepted as a final settlement of the long-contested question of the extent of the grant. But it left the State of Iowa, which had made engagements on the faith of the lands certified to her, in an embarrassed condition, and it destroyed the title of the Navigation Company to lands of the value of hundreds of thousands of dollars, which it had received from the State *for money, labor, and material actually expended and furnished*. What was also equally to be regretted was, that many persons, purchasers for value from the State or the Navigation Company, found their supposed title an invalid one.

This decision was made and published in 1860, and to *remedy the grave evils* above mentioned, Congress, on the 2d March, 1861, passed a joint resolution in the following words:

(Here follows a copy of the joint resolution.)

To show still further the intention of Congress to make good to the State, as far as possible, all that was claimed by her under the original grant, Congress passed an act, approved July 12, 1862, by which the grant was, in express terms, extended to the northern boundary of the State, and as some of the land had been sold by the United States, provision was made for the selection of an equal quantity of lands of the government in any other part of the State.

This legislative history of the title of the State of Iowa, and of those to whom she had conveyed the lands certified to her by the Secretary of the Interior as part of the grant of 1846, including among her grantees the Des Moines Navigation and Railroad Company, needs no gloss or criticism to show that the title of the State *and her grantees is perfect*, unless impaired or defeated by some other and extrinsic matter which would have that effect.

Such matter is supposed to be found in the act of 1856, already referred to, granting lands to the State of Iowa to aid in building railroads.

And he then proceeds to show that the title of the State and her grantees, including the River Company and its grantees, is perfect and complete, notwithstanding the other matters thus suggested. He reviews and reaffirms the Wolcott case, saying that it was then decided—

That by the joint resolution of 1861, the title erroneously certified to the State, under the act of 1846, was validated and made good. \* \* \* And we therefore reaffirm \* \* \* that by the joint resolution of 1861 and the act of July 12, 1862, the State of Iowa did receive the title for the use of those to whom she had sold them as part of that grant (August 8, 1846), and for such other purposes as had become proper under that grant.

Also, *Iowa Homestead Co. vs. Des Moines N. & R. R. Co.*, and others (17 Wallace, page 153).

Davis, J., after reaffirming the Wolcott and other cases above cited, says:

It is, therefore, no longer an open question that \* \* \* the joint resolution of March 2, 1861, and the act of July 12, 1862, transferred the title from the United States and vested it in the State of Iowa *for the use of its grantees under the river grant*.

The case of *Litchfield vs. The County of Webster*, in the State of Iowa, and *Jonathan Hutchison*, treasurer of said county, and the case of the County of Webster, in the State of Iowa, and *Jonathan Hutchison*, treasurer of said county, *vs. Litchfield*, were argued together at the October term of the Supreme Court of the United States for 1879. The decision in those cases was made since the majority report on this bill was filed. It is a very important case, and it is therefore given in full.

Supreme Court of the United States.

Nos. 1002 and 1003. October term, 1879.

EDWIN C. LITCHFIELD, APPELLANT,  
*vs.*  
 THE COUNTY OF WEBSTER, IN THE STATE OF  
 Iowa, and Jonathan Hutchison, treasurer  
 of said county. } No. 1002.

AND

THE COUNTY OF WEBSTER, IN THE STATE OF  
 Iowa, and Jonathan Hutchison, treasurer of  
 said county, appellants,  
*vs.*  
 EDWIN C. LITCHFIELD. } No. 1003.

Appeals from the circuit court of the United States for the district of Iowa.

Mr. Chief Justice WAITE delivered the opinion of the court:

The primary question to be decided in this case is as to the time when the lands which passed to the *bona fide* purchasers from the State of Iowa under the joint resolution of Congress approved March 2, 1861 (12 Stat., 251), became taxable by the laws of the State. The controversy is about taxes assessed for the years 1859, 1860, 1861, 1862, 1863, 1864, 1865, and 1866.

The facts affecting the title are fully stated in the case of *Wolsey vs. Chapman*, decided at the present term, where we held, following the principles settled in *Litchfield vs. D. & P. R. R. Co.* (23 How., 66); *Wolcott vs. Des Moines Co.* (5 Wall., 681); *Riley vs. Wells* (not reported); *Williams vs. Baker* (17 Wall., 144), and *Homestead Co. vs. Valley R. R.* (*Id.*, 153), that the United States continued to own the lands until the adoption of the joint resolution. Nothing was included in the original river grant of 1846, except the lands below the Raccoon Fork. While on account of the action of the executive department of the general government, those above the Fork were reserved from sale and did not pass to the State when selected as school lands under the act of 1841, or as railroad lands by the grant of 1856, and were not open to pre-emption entry, they were not actually donated by the United States to the State or to the purchasers from the State until the joint resolution was adopted. *The grant made by that resolution was just as much an original grant as it would have been if the act of 1846 had never been passed. The reservation from sale by the executive department neither transferred any title to nor created any interest in the State. It simply kept the ownership in the United States. While the subsequent gift was undoubtedly made because of what had happened before, the United States continued to be the owners of the lands, both in law and in equity, until this last step was taken.* Such being the case, the lands were not taxable before March 2, 1861. They were, down to that time, actually the lands of the United States, and no one else had any interest whatever in them.

This disposes of the taxes for the years 1859 and 1860, but another question arises as to those of 1861. Under the revenue laws of Iowa, in force at that time, government lands entered or located, or lands purchased from the State, could not be taxed for the year in which the entry, location, or purchase was made. (Laws of Iowa, Rev. 1860, p. 110, sec. 711, par. 7.) In *McGregor vs. Brown* (39 Iowa, 656), this was held to mean that government lands were not taxable until the next year after a patent could be demanded for them. To the same general effect are *Iowa Falls & Sioux City R. R. vs. Cherokee County* (37 Iowa, 483); *Goodrich vs. Beaman* (*Id.*, 563); *Iowa Falls & Sioux City R. R. vs. Woodbury County* (38 Iowa, 498.) The revenue year of the State for 1861 commenced before March. It is clear, therefore, that the lands were not taxable for that year. They were neither entered, located, purchased from the State, nor patented, within the meaning of the revenue laws, until then.

We think, however, that for the year 1862 and thereafter they were taxable. By the joint resolution Congress relinquished all the title the United States then retained to the lands which had before that time been certified by the Department of the Interior as part of the river grant, and which were held by *bona fide* purchasers under the State. No further conveyance was necessary to complete the transfer, and the description was sufficient to identify the property. The title thus relinquished enured at once to the benefit of the purchasers for whose use the relinquishment was made. All the lands involved in this suit had been certified, and Litchfield, or those under whom he claims, were *bona fide* purchasers from the State. It matters not, so far as this branch of the case is concerned, that at that time there were doubts as to whether the United States

retained any title which could pass under the resolution. That question has now been settled in favor of Litchfield, and it has also been decided that after the resolution went into effect the United States had no longer any interest in the property, legal or equitable. It became private property, and as such subject to taxation under the revenue laws of the State.

It only remains to consider whether, under the circumstances of this case, it is within the power of a court of equity to enjoin the collection of the interest or penalty which the revenue laws of the State require the treasurer of the county to collect in case taxes legally assessed are not paid within the time fixed by law. The statutes regulating this matter are as follows:

"SEC. 759. On the first day of February, the unpaid taxes, of whatever description, for the preceding year shall become delinquent, and shall draw interest, as herein-after provided;

"SEC. 760. The treasurer shall continue to receive taxes after they have become delinquent, until collected by distress and sale; but if they are not paid before the first of March, he shall collect as a penalty for non-payment, from each taxpayer so delinquent, one per cent. of the amount of his tax additional, and if not paid before the first day of April, he shall collect another one per cent. additional, and so for each full month which shall expire before the tax shall have been paid. The treasurer shall, in all cases, make out and deliver to the taxpayer a receipt for taxes paid, stating the time of payment, the description of the land, the amount of each kind of tax, the interest on each, and costs, if any, giving a separate receipt for each year; and shall make the proper entries of such payments in the books of his office, and such receipt shall be in full for his taxes that year. \* \* \*

By section 761 the clerk of the county board of supervisors is required to keep full and complete accounts with the county treasurer, and, among other things, to charge him with "interest on delinquent taxes," and, "on the first day of each month, ascertain the amount of delinquent and unpaid taxes of all classes on said day, and charge said treasurer in said account with one per cent. on the amount thereof to be collected by him, as provided in section 52 [section 760] of this act." (Laws of Iowa, Rev. 1860, pp. 118, 119.) On the first day of October in each year the treasurer is required to offer at public sale all the lands on which the taxes for the previous year had not been paid. Of this sale notice was to be given by advertisement. (Sec. 763, p. 119.)

It appears from the agreed statement of the parties that the lands about which this controversy arises amount in the aggregate to 32,602 $\frac{1}{2}$  acres. Of this, 3,301 acres are part of the school lands selected by the State under the act of 1841, the particulars of which appear in the case of *Wolsey vs. Chapman*, *supra*, and about 17,000 acres fall within the limits of the railroad grant of 1856, also referred to in that case. In respect to the school lands, it appears that the State has at all times claimed title adverse to that of Litchfield and his grantors. In the adjustment of the controversies with the United States, as was seen in the *Wolsey* case, the agent acting on behalf of the State was specifically required not to relinquish any claim of the State to its selections under the act of 1841; and even at the present term of this court the State has appeared here as a litigant, asserting its own title and that of its grantees as superior and paramount to that of Litchfield.

As to the railroad grant of 1856, the agreed statement shows that on the demand of the State the 17,000 acres now in controversy were certified for the benefit of the Dubuque and Pacific Railroad Company. This claim on the part of the State was maintained and constantly asserted adversely to Litchfield until the case of *Wolcott vs. Des Moines Company* (5 Wall., 87) was decided in this court at the December term, 1866. That decision settled the dispute as to these lands, and from that time Litchfield has paid all taxes as they were annually assessed.

The State has never claimed adversely to Litchfield any portion of the remaining 12,000 acres, but the United States maintained that the title did not pass by the joint resolution of March 2, 1861, so as to cut off pre-emption and homestead entries. That question remained open until the December term, 1869, of this court, when it was settled in the case of *Riley vs. Wells*. Until then, or, at least, until the adjustment between the United States and the State, in 1866, the title of the navigation company and its grantees to this portion of its lands was disputed by the United States, and sales conflicting with those of the navigation company were made at the government land offices.

On the 21st of September, 1860, the treasurer and recorder of Webster County wrote the agent of the navigation company, the grantor of Litchfield, to the effect that the lands were on the tax-book, but that until the title was adjusted they would not be advertised for sale. Before that time, on the 14th of June, 1860, the auditor of state wrote the auditors of the several counties in which the disputed lands were situated as follows:

"We conclude, in view of the so-called river lands, and the further question as to their being liable to tax, that it would be well not to offer them for sale for the taxes until these matters are determined or adjusted in some manner. There are two ques-

tions in regard to them: Firstly, has the state any title to them under the river grant? which is reported has been decided in the negative, but of which we have no official information; 2d, whether they are taxable prior to 1859 as the property of the river company or their grantees. The last question I thought had been decided by our courts, but learn from Attorney-General Rice that there is some doubt about it. Upon the whole, it is thought best not to sell at present lest it may lead to unnecessary trouble and expense."

It also appears from the statement of facts, that during the years 1863, 1864, 1865, and 1866 the taxes charged against the property were in some particulars in excess of what the law allowed. No person was designated on the tax-book as owner. Any one could pay the taxes and get a receipt. If one of the contesting claimants paid the taxes, supposing the lands were his, he could not, if he finally failed to maintain his title, recover from the real owner what he thus advanced. We so held in *Homestead Co. vs. Valley R. R.* (17 Wall., 153).

It thus appears that while Litchfield, or his grantor, was in reality the owner of the lands from 1862 to 1866, and bound to pay the taxes for those years as assessed, the State, from which the taxing power came, disputed his title and set up an adverse claim in its own right to something more than 20,000 acres. At the same time the United States disputed his ownership of the remaining 12,000 acres. All this was known to the State authorities, and in view of the facts the State, by its proper officer, gave notice to the parties in interest that the lands would be put on the annual tax-books and charged with the taxes the owner should pay, if the title had passed out of the United States or the State, in law or in equity, but that to avoid "unnecessary trouble and expense," no legal steps would be taken to enforce the collection "until the title was adjusted." This we understand to be the legal effect of the instructions of the auditor of state to the treasurers of the several counties in which the disputed lands were situated, and the communication from the treasurer of Webster County to the agent of the navigation company, made while the tax-books of 1859 and 1860 were in his hands for collection. As soon as the title was adjusted, and even before, Litchfield or those under whom he claims commenced the payment of the annual taxes as they fell due, and offered to pay those of 1862, 1863, 1864, 1865, and 1866, with interest at the rate allowed by law for delay in the payment of ordinary debts, but the treasurer declined to receive less than the statutory interest or penalty, unless the taxes of 1859, 1860, and 1861 were included. Although the lands were advertised for sale in 1862 and annually thereafter, they were purposely withheld from sale until this suit was commenced.

Under these circumstances we think equity may relieve against that part of the statutory interest which is in the nature of a penalty. This provision was undoubtedly made to secure promptness in the payment of taxes when actually due and demandable. It was evidently not intended so much as punishment for non-payment as compensation for delay. In all parts of the statute, except section 760, it is spoken of as interest. In one place in that section it is termed a penalty, but in another referred to as interest. The amount increases as the time of payment is put off. Now it seems clear to us that if a State, under whose authority a tax is levied, sets up a title in itself to the property taxed adverse to that of the true owner, and, to save "unnecessary trouble and expense," forbears to enforce the collection until the "title is adjusted," no claim can properly be made for extraordinary compensation on account of a delay in payment of the tax which may fairly be said to have been brought about by its own wrongful acts. Under the circumstances, Litchfield and his grantor might well have supposed that the taxes, as charged, were not to be treated as "delinquent" until in some form it had been determined whether the lands taxed were in law taxable. It now appears that the adverse claims of the State and the United States were unjust, and that Litchfield is bound for the payment of the taxes of 1862 and thereafter. He therefore actually owes the money called for by the taxes, and may properly be charged with such interest after the taxes became due as is by law payable on other money obligations, but the extraordinary compensation given by the statute for delay in payment of taxes charged on the tax-books and in the regular process of collection occupies a different position. It is an elementary principle in equity jurisprudence, that if money is lying dead to meet an obligation, and delay in its payment is caused by the fault of him to whom it is to be paid, interest during the delay is not recoverable. Here the delay was caused by the improper interference of the State and the United States with the title. Litchfield himself has been guilty of no fraud or willful default. The State has voluntarily abstained from enforcing the collection because of doubts about its right to do so, and Litchfield has had the use of his money while the dispute remained unsettled. As soon as the title was adjusted he offered to pay what was actually due, with ordinary interest, and this was refused. Under these circumstances we think the court below was right in enjoining the collection of all penalty or interest in excess of six per cent. per annum. In *Stryker vs. Polk County* (22 Iowa, 137) there is a strong intimation that in a case like this such relief might be granted. None of the objections

which were found to granting the injunction asked for in that case exist here, and it is clearly made to appear that the action of the State affected the title of this plaintiff prejudicially. Such a case was made by the bill and established by the evidence. It may fairly be inferred, from what is said in *Litchfield vs. Hamilton County* (40 Iowa, 71), that in such a case the courts of the State would afford the remedy.

Although taxes in Iowa are levied and collected by the counties, all is done under the authority of the State, and the counties are charged with whatever is done by the State affecting the rights of the tax-payer. No complaint is made by *Litchfield* of the amount found due from him by the court below, if the decree is in other respects right, as we find it to be.

Decree affirmed, each party to pay the costs of his own appeal.

Here is a bulwark of decisions, which is impregnable. The questions settled by these cases are the following :

1. That the grant made by the resolution of 1861 was an original grant of the lands in question.
2. That this grant inured to the benefit of the grantees of the State of Iowa.
3. That such grantees are *bona fide* purchasers and *bona fide* holders of the lands in question.
4. That these lands were taxable as the lands of such grantees after the year 1861.
5. That after the resolution of 1861 went into effect, the United States had no longer any interest in these lands, legal or equitable.
6. That the Harvey settlement does not affect the right of the grantees of the State of Iowa in any manner; and that the settlement of 1866 does not affect the case now before Congress.

Under the decision of the Supreme Court in the case last above cited, *Litchfield* has paid to the State of Iowa \$10,352.13 taxes, and has the following receipt :

Duplicate.]

FORT DODGE, IOWA,  
April 30, 1880.

Received from Edwin C. Litchfield, complainant in the within entitled cause, ten thousand and three hundred and fifty-two <sup>13</sup>/<sub>100</sub> dollars (\$10,352<sup>13</sup>/<sub>100</sub>) in full payment, discharge, and satisfaction of all the taxes, interest, costs, charges, claims, liens, and demands in the bill of complaint in said cause mentioned and set forth in the decree herein.

The original receipt, of which this is a duplicate, is endorsed upon a certified copy of the decree made and entered in the cause of Edwin C. Litchfield *vs.* The County of Webster, in the State of Iowa, and Jonathan Hutchinson, the treasurer of said county, defendants, in the United States circuit court, district of Iowa, May term, 1879, Tuesday, May 20, 1879, and affirmed by the Supreme Court of the United States, October term, 1879, No. 1003.

A. LEONARD,  
Treasurer of Webster Co., Ia.

STATE OF IOWA,  
Webster County, ss :

I, R. O. Grayson, a notary public in and for said county, do hereby certify that the above is a full and exact copy of the original receipt; and I hereby certify of my own knowledge that A. Leonard, treasurer of said county, executed the same in my presence.

Witness my hand and notarial seal this 30th day of April, A. D. 1880.

[SEAL.]

R. O. GRAYSON,  
Notary Public.

This payment of taxes is upon lands involved in this bill, and of which he is sought to be deprived by this bill.

The effect of this act is to take from the citizens of other States property which they have owned for more than twenty years, and bestow it upon citizens of Iowa. That is to say, it quiets title by taking it away from the true owners, who reside in New York and elsewhere outside of the State of Iowa, and conferring it, by the fiat of Congress, upon residents of the State of Iowa. It is not a bill to authorize persons to go

into court to establish an existing right, but the bill first gives the right and then enforces it at the cost of the United States.

The minority of the committee are clearly of opinion that this bill ought not to become a law.



## MILEAGE OF MARSHALS.

MARCH 27, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. PHILIPS, from the Committee on Expenditures in the Department of Justice, submitted the following

### REPORT:

[To accompany bill H. R. 426.]

*The Committee on Expenditures in the Department of Justice, to whom was referred bill H. R. 426, beg leave to report:*

That they have considered the same, and recommend its passage with the following accompanying amendments:

After the word "writs," in line 2 of section 3, insert the words *or subpoenas*.

After the word "actual," in line 11, same section, insert the words *and necessary*.

After the word "writs," in line 14, same section, insert the words *or subpoenas*; and after the word "were," same line, insert the words *or might have been conveniently*.

The committee also recommend the following amendment as a new section, to follow section 3 of the House bill, and to be designated as section 4, to wit:

SECTION 4. When a marshal or his deputy shall have in his hands two or more writs, including subpoenas, issued in any case to which the United States is not a party, and which can be conveniently, and with due regard to the dispatch of business, served at the same time or on the same journey, it shall be his duty so to serve the same, and his costs and allowances therefor shall be regulated by the rule hereinbefore provided. A party when first asking that subpoena for witnesses be issued shall furnish to the clerk at that time the names of his witnesses, so far as the same may be known to him, residing in one county, and if thereafter such party shall want other witnesses subpoenaed for the same term from the same county or counties, he shall furnish such names to the marshal, who shall indorse on the subpoena the date of the presentation of the additional names, and insert the same in or upon the subpoena already issued for such county, and serve the same. If such subpoena has been once before served, the marshal shall for the service of the same on said additional witnesses be allowed mileage as in the first instance, but not otherwise.

If this section be adopted, sections 4, 5, and 6 of the bill will be sections 5, 6, and 7.

The purpose of the new section is obvious. It is to make the remedial legislation proposed by the bill applicable to cases to which the United States is not a party, as the preceding provisions apply to cases to which the United States is a party.

The whole bill, thus amended, will correct in a measure a palpable abuse in the administration of justice, viz, the allowance to marshals of fees for services never actually rendered, and double mileage for distances traveled only once. The committee has examined a letter from

the Attorney-General, to whom the subject-matter was referred during the Forty-fifth Congress, and the present bill substantially embodies the views of that officer. It also contains provisions relative to the manner in which marshals shall keep their fee-books. These provisions we think well adapted to secure compliance with the law, and to prevent extortion, or opportunities therefor, by allowing at all times public inspection of the books in the marshal's office. This system has been tried in several of the States and found to work well.

Some of the committee are of opinion that the measure now before Congress, requiring that marshals shall be paid salaries instead of fees, should pass; but until that system shall be adopted the present laws must remain in force unless repealed, and it seems to the committee that this bill will prevent much of the abuse now generally complained of.



RELATIVE TO PAY OF EMPLOYÉS OF THE GOVERNMENT  
PRINTING OFFICE FOR LEGAL HOLIDAYS.

MARCH 27, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. O. R. SINGLETON, from the Committee on Printing, submitted the following

R E P O R T :

[To accompany H. Res. 253.]

*The Committee on Printing, to whom was referred the letter from the Public Printer relating to the payment of employés of the Government Printing Office for legal holidays, and the memorial of said employés upon the same subject, having had the same under careful consideration, beg leave respectfully to submit thereon the following report :*

It appears that the grievance complained of by the employés in their memorial arises from a construction of law, recently made by the Public Printer, by which they were refused payment for the 1st day of January, 1880. It is admitted on all sides that no work was done on that day, and the question presented, therefore, simply is, Can payment be made to the employés, under existing laws, without actual work or service performed? All compensation for labor in the office is regulated by section 3763 of the Revised Statutes of the United States, which provides that—

The Congressional Printer may employ, at such rates of wages as he may deem for the interest of the government and just to the persons employed, such proof-readers, compositors, pressmen, binders, laborers, and other hands, as may be necessary for the execution of the orders for public printing and binding authorized by law; but he shall not, at any time, employ in the office more hands than the absolute necessities of the public work may require.

This section was supplemented by the act of February 16, 1877 (Stat. at L., vol. 19, chap. 58, fol. 231), which, after making a deficiency appropriation, continues as follows :

*Provided further,* That from and after the close of the present session of Congress the Public Printer shall pay no greater price for composition than fifty cents per thousand ems and forty cents per hour for time-work to printers and bookbinders.

When it is remembered that all the work done in the Government Printing Office is either paid for by the piece or by the hour, the language of the law fixing the maximum rate to be paid settles the question now under consideration completely. It is mandatory, and directs that no more shall be paid than 50 cents per thousand ems composed, or 40 cents per hour of labor performed. Unless, therefore, some other law can be found upon the statute books directing payment to these employés upon certain specific holidays, they have no legal status in the case.

Your committee, after a careful examination of the statutes, fail to find

therein such a law. Upon the question of legal holidays the Revised Statutes of the United States are silent. Those relating to the District of Columbia, section 993, page 116, provide :

The following days, namely: The first day of January, commonly called New-Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; and any day appointed or recommended by the President of the United States as a day of public fast or thanksgiving, shall be holidays within the District; and shall for all purposes of presenting for payment or acceptance, for the maturity and protest, and giving notice of the dishonor of bills of exchange, bank-checks, and promissory notes, or other negotiable or commercial paper, be treated and considered as is the first day of the week, commonly called Sunday; and all notes, drafts, checks, or other commercial or negotiable paper falling due or maturing on either of said holidays shall be deemed as having matured on the day previous.

The act of January 31, 1879 (Stat. at L., vol. 20, chap. 38, fol. 277), supplements the above by providing—

That section 993 of the Revised Statutes, relating to the District of Columbia, be \* \* \* amended by adding to the days therein declared to be holidays within the District of Columbia the twenty-second day of February; and such day shall be a holiday for all the purposes mentioned in said section.

It is evident that these provisions, while fixing certain legal holidays to be observed within the District of Columbia, do not in any wise conflict with the law requiring labor to be performed before wages can be paid in the Government Printing Office.

While it is, therefore, the opinion of your committee that under the provision of existing laws no such payment can properly be made to the memorialists, they nevertheless believe that these operatives should be placed upon an equality in this regard with the employés of all other government departments, who are allowed these holidays with pay. The committee see no good reason why the general rule should make an exception of this particular class, and therefore submit the accompanying joint resolution as obviating the difficulty, with the recommendation that the same do pass.

O. R. SINGLETON,  
*Chairman.*  
P. C. HAYES.

I concur in the conclusion that legal holidays be allowed with pay, but do not join in the legal opinions expressed.

B. WILSON.

## REDUCTION OF EXPENSE OF PUBLIC PRINTING AND BINDING.

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MARCH 27, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. O. B. SINGLETON, from the Committee on Printing, submitted the following

### REPORT:

[To accompany bill H. R. 447.]

*The Committee on Printing, to whom was referred the bill (H. R. 447) to reduce the expense of the public printing and binding, and for other purposes, having considered the same, beg leave to submit thereon the following report:*

It has long been admitted by all who have ever investigated the subject that the printing and general distribution of public documents have been controlled by no fixed and well-digested system. Millions of the public moneys have been squandered, in the course of years, in the publication of useless reports; editions entirely too large of other documents have been printed, while, by reason of this waste, the more valuable publications have been curtailed in an effort to economize.

The present bill is intended to remedy these evils. During the Forty-fifth Congress the Committee on Printing called before them representatives from each of the executive departments, the Clerk of the House, and the Secretary of the Senate, and by their joint labors prepared the proposed law.

While curtailing the unnecessary printing, wherever that was possible, they have in some instances found it necessary to increase the number printed under the present law.

After completing the bill, the committee next requested Mr. Childs, chief clerk of the Government Printing Office, and Mr. Roberts, foreman of the bindery, carefully to examine it. Together with the clerk of the committee, they took up the bill, section by section, and reported it as their opinion that the saving effected by it, if it should become a law, would not be less than \$175,000 per session. The estimate made by the committee exceeded these figures by about \$150,000.

The proposed bill has the sanction of all of the executive departments, showing that it provides for all that is necessary; at the same time, by abolishing all superfluous printing and extravagant binding, it effects this large annual saving to the government.

Your committee are therefore of opinion that the bill should pass, and with that recommendation report it back to the House with sundry amendments.



**STATUES ON NEW YORK SUB-TREASURY BUILDING.**

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**MARCH 27, 1880.**—Referred to the House Calendar and ordered to be printed.

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**Mr. GEDDES**, from the Committee on the Library, submitted the following

**REPORT:**

[To accompany bill H. R. 5384.]

**The Joint Committee** on the Library, to whom was referred the bill **H. R. 4917**, have considered the same, and report back a bill as a substitute therefor, and recommend its passage.



**AMENDING CENSUS ACT.**

**MARCH 27, 1890.**—Recommitted to the Committee on Census and ordered to be printed.

**Mr. P. B. THOMPSON, jr.,** from the Committee on Census, submitted the following

**R E P O R T :**

[To accompany bill S. 885.]

*The Committee on Census, to whom was referred House bill, No. 885, respectfully report:*

That they have considered said bill, and report the same back to the House, agreeing to sections 1, 3, 4, 5, and disagreeing to sections 2, 6, 7, and 8. They therefore amend said bill by striking out sections 2, 6, 7, and 8 of said Senate bill, and inserting therein section 9, as follows:

“The Superintendent of Census shall collect and publish the statistics of the population, industries, resources, of the district of Alaska, with such fullness as he may deem expedient, and as he shall find practicable under the appropriations made, or to be made, for the expenses of the tenth census.”





## ALCOHOLIC LIQUOR TRAFFIC COMMISSION.

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MARCH 27, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. BREWER, from the Select Committee on Alcoholic Liquor Traffic, submitted the following

### R E P O R T :

[To accompany bill H. R. 5386.]

*The Select Committee on Alcoholic Liquor Traffic, to whom was referred the bill (H. R. 2387) providing for the appointment of a commission on the subject of the alcoholic liquor traffic, beg leave to report :*

The said committee has had said bill under consideration as well as the numerous petitions relating to the same subject-matter, and respectfully report back said bill with certain proposed amendments, and when so amended, your committee recommend that the same do pass.

Your committee deem it desirable to submit a short statement of the reasons which have induced their recommendation, and briefly to consider some objections which have been raised in opposition to such proposed legislation.

First, then, it is proper to inquire whether Congress has any jurisdiction to authorize such investigation as is proposed. Investigations under the authority of Congress, whether by a committee consisting of its own members or by a commission of other persons, are usually made to determine as to the conduct of some officer of the government, or are of a general nature, with a view to furnish proper information as an aid or guide to future legislation.

Jurisdiction can clearly be supported in this case upon the latter ground, and we think it can also be sustained upon the broad ground that Congress has power to investigate any subject-matter which pertains to the health and general welfare of the people, so long as such investigation does not interfere with individual rights or property.

It is not claimed by those who have petitioned for the creation of such a commission as is provided for in this bill that Congress possesses the power to regulate or prohibit the traffic in intoxicating liquors within the States. It is conceded by all that such power and jurisdiction rests solely in the State legislatures, but your committee are clearly of the opinion that Congress has the exclusive jurisdiction over the subject-matter so far as it relates to revenue and taxation, and complete and exclusive legislative jurisdiction over the subject of regulating or prohibiting the sale of alcoholic liquors in the District of Columbia and the Territories under the jurisdiction of the national government; and your committee is at a loss to see how this claim can be successfully controverted or doubted. Whether it will ever be thought advisable or expedient for Congress to exercise such power or jurisdiction, it is not

necessary now to discuss or determine. The fact that each of the organized Territories has a local legislature of its own, which also has power to create such legislation, if a sufficiently strong local sentiment can be created in its favor, will, of course, be a consideration of weight when the question arises. The results of this inquiry may largely affect the judgment of Congress as to whether it ought to exercise its legislative jurisdiction over this subject within the limits where it confessedly has the power. But, if the facts ascertained and reported by this commission shall not induce Congress to legislate, they may have such an important and controlling influence upon the public sentiment and judgment within the national domain, outside the States, as to induce restraining and preventive legislation against intemperance by the local legislatures. These *quasi* governments in the Territories are, to a certain extent, but agencies and instrumentalities of the general government, and, if improved legislation by them shall result from the information thus gained, it may very properly be regarded as of national benefit.

The District of Columbia has no local government of its own, and is dependent wholly upon Congress for legislation relating to its internal affairs and the happiness and welfare of its people. At a low estimate, the cost to the consumers of alcoholic, malt, and other liquors consumed will average ten dollars to each man, woman, and child within the country. Assuming this to be a true estimate, then there is paid over one million five hundred thousand dollars for such liquors in the District of Columbia alone. Is it not worth the careful attention of Congress to see if some way cannot be devised to save to the people of this District a portion of that immense sum of money? During nearly every session of Congress we are called upon to appropriate money to give employment to aid the needy in this District, and often to appropriate money directly to relieve them from their suffering. The information sought to be gathered by this commission will be of incalculable benefit to Congress in its effort to devise some law to lessen the expenditure of money for alcoholic liquors in this District. Various measures are being tried in the different States to lessen the liquor traffic and its attending evils. In some States prohibitory laws are sought to be enforced; in others, local option; in others, license; while in others, taxation. Who can tell which accomplishes the most good? Each member may know how the particular system adopted works in his own State or locality, but he has no means of comparing one system with another; but after the proposed investigation shall have been made Congress will have information to act upon, where it has jurisdiction to legislate.

The nation now derives a very large revenue by the taxation of the manufacturer, the importer, and the seller of intoxicating liquors. Can it be said that our national laws on this subject may not properly and constitutionally be affected by the consideration whether the subject-matter of all those laws be a benefit and blessing to the nation and all the people thereof, so that its manufacture, sale, and use ought to be encouraged in all lawful ways, or whether, on the other hand, it is an evil demon, every way hurtful to the nation and people, and which should be restrained and circumscribed in every constitutional mode?

The committee believe that the results of the proposed commission may justly and constitutionally affect national legislation upon the subject in question and incidentally strengthen the cause of temperance and sobriety. So, too, if the information thus obtained, covering a broader field, clothed with a robe of more official authority, commanding more respect, and less liable to challenge or contradiction than the

individual efforts and statements of private philanthropists have hitherto attained, shall have the effect to produce better State laws or the better enforcement of State laws for the restraint of the sale and use of intoxicating liquors, it is a consideration not to be lost sight of. We do not seek to acquire jurisdiction on these grounds, yet jurisdiction being established they furnish additional reasons for exercising the power.

With this short statement of the views of the committee as to the jurisdiction of Congress, is it expedient to order this commission and inquiry? That the evils of intemperance are enormous, and that the use of intoxicating drinks is one of the dangers which seriously threaten our national prosperity as well as national reputation, are facts which are very generally conceded. Every good citizen will give his countenance and aid to any measure which will limit and restrain these evils. Many of those who have petitioned for the creation of such a commission are believers and supporters of prohibitory legislation, and they desire to extend and strengthen it every way in their power; while there are others of them who deplore the evils of intemperance and believe in the efficacy of legislation as a remedy, yet are opposed to purely prohibitory laws, but believe that all that can be accomplished by legislation must be gained by stringent laws regulating and controlling the traffic. There is still another class of our people (and doubtless among them many who would gladly see the evils of intemperance lessened) who do not believe in legislation upon the subject in any form. They believe that the only practicable remedy is by an appeal to the individual judgment and conscience; that in no other way can men be won to habits of temperance and sobriety; that in no other way is it possible to create a public sentiment that shall be strong and efficient enough to make habits of intemperance unpopular and disgraceful, and thereby circumscribe and limit the evils of intemperance. The committee believe that the people desiring the creation of such a commission deserve the respectful attention of Congress. They belong to the most respectable and intelligent class of our citizens. They have long been identified with the best interests of society and belong to the various religious organizations without distinction of denomination. They have long been engaged in a philanthropic effort which has met the commendation of some of the noblest and most gifted of American citizens as well as of other civilized nations. The committee does not now desire to discuss the best mode of meeting and combating the great evil of intemperance—whether by legislation or by bringing the power of public opinion to bear against it—but they deem a full and comprehensive knowledge of the evil essential. Those who claim that legislation is the only mode by which the traffic can be stopped or circumscribed admit equally with others the necessity of creating a right public sentiment, as no law on the subject not upheld and sustained by the popular judgment would be effective. It is with this view, in part, that this investigation is sought to be made, that by a more thorough knowledge of the evil the greater wisdom may be obtained to devise remedies.

Your committee are unable to see how the inquiry proposed can meet with any reasonable opposition. So far as they know, there is no anti-temperance party in the country; no party that is avowedly in favor of the misery and degradation and waste of intemperance. The only issue made in the discussion of the question is as to the best method of promoting temperance reform. This commission will be required to investigate the facts as to the actual working of the different forms of legislation, and ascertain, so far as possible, what remedies have, by experience, proved most efficient, and ascertain the amount of money

invested in the liquor traffic; the amount of money it brings into the treasuries, national, State, and municipal, and especially from what classes of society and in what manner this revenue is derived.

It is important for the people to know the influence of this traffic upon morals; its relation to crime and criminals; its relation to paupers and pauperism; its relation to industry and political economy; and its relation to health and length of life.

If such a commission should find, as a result of their labors, as your committee apprehend they may find, that the sixty millions of revenue collected from the liquor traffic and put into the United States Treasury actually cost the people of the nation, in industry, in health, in length of life, in taxes, in the maintenance of law, in provision for penitentiaries and poor-houses and hospitals, many times that amount, it may well be asked whether this is a wise economy, and whether there may not be *a better way* to supply the public purse.

If such commission should find, as your committee apprehend they may find, that the traffic in intoxicating liquors is destructive of morals, makes men bad citizens, unreliable and unproductive members of society, and demoralizing in their influence, makes bad husbands, bad fathers, and bad sons, breaks up families, provokes quarrels, and generates crime, is it not important that these facts should be known to the people?

If these facts should be established, no individual or class could complain if local legislation should cut off gains derived from a traffic which saps the foundations of the state; which undermines the moral character of the people; which makes needful expensive safeguards against crime and expensive appliances for its punishment. If these facts should not be established, no man's occupation is threatened or put in jeopardy by the inquiry.

It has been suggested against the authorizing of this commission that the evil complained of is already well known and well understood, and that a report of such a commission could add nothing.

It is true that every person knows individual instances, but very few know anything of the vast aggregate of the cost, crime, and suffering occasioned by it, and would be appalled by its presentation. It has been said, too, that the information can be collected by State agencies and by associations of private individuals who are interested in the reform. To a certain extent this is true; but the State agency is too narrow in its scope, and the reports and statistics gathered by individual associations have no authoritative voice, and are always open to the charge that they are the partial judgment of over-zealous and fanatical reformers. The evil is national in extent and magnitude, and the whole truth of the subject ought to be shown with the guarantees of official responsibility and authority, so that, to whatever remedy it may point, no doubt shall exist as to the grounds upon which action is taken.

Your committee might point to many precedents established by Congress, which would not only go far in establishing the propriety of this investigation but the jurisdiction of Congress to order the same. The House is now investigating, by one of its committees, the great and important question of inter-State commerce as conducted upon our railroads. Congress only seeks to legislate as to roads passing from one State to another; but we apprehend said committee is not confined in its inquiries to those roads which pass from one State to another, but seeks also to gather information as to how business is conducted on roads which may be confined to the limits of any particular State. That committee seeks to gather information as to our whole railroad system, not

for the purpose of legislating on lines confined to the limits of a State, but for the purpose of gathering information which will aid them in devising intelligent legislation as to such lines of road as Congress may have jurisdiction to legislate upon, in the same manner as your committee now seeks to gain information of the various systems of regulating and controlling the alcoholic liquor traffic. Congress has appropriated over half a million of dollars to investigate as to yellow fever, its prevention, and suppression. The jurisdiction of the National Board of Health is far more extended and doubtful than that which is sought to be given to the proposed commission. Your committee has no desire to belittle the investigations relating to the yellow fever, but they are of the opinion that a thorough investigation of the alcoholic liquor traffic will show that more people, directly and indirectly, lost their lives in the United States in 1878 from the use of alcohol than were lost by the yellow fever during the same time. The bill reported by your committee will insure not only thoroughness but entire fairness in the examinations and conclusions of the commission. All the members of the commission are not to be chosen from those who believe in the efficacy of prohibitory laws. The execution of the proposed law will cost but a trifle, but a thorough execution of the law, your committee believe, will be of vast importance to the American people. The committee in their recommendations have taken occasion to adopt much of the report of the House Committee on the Judiciary on the same subject made in the Forty-third Congress.



## VIEWS OF THE MINORITY.

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Mr. BOUCK, from the Select Committee on Alcoholic Liquor Traffic, submitted the following:

*A minority of the Select Committee on Alcoholic Liquor Traffic, to whom was referred the bill (H. R. 2387) providing for the appointment of a commission on the subject of the alcoholic liquor traffic, respectfully submit the following report:*

This bill provides for the appointment of a commission to investigate the alcoholic liquor traffic, with a secretary at a salary of \$2,500 a year. It appropriates the sum of \$15,000 to pay the expenses of the commission.

The majority of the committee concede that Congress has no power to regulate or prohibit the traffic in alcoholic liquors in the States. Therefore, the only question to be considered is whether the proposed investigation is necessary, or will result practically in such public benefit as to justify the proposed expenditure.

In the several States for more than forty years the subject of the traffic in alcoholic liquors, and laws regulating or prohibiting the same, have been extensively considered, not alone by the people, but by the legislatures of most of the States. Numerous laws have been enacted relating thereto.

The subject has been carefully and exhaustively discussed and considered by the ablest minds of the country; in the pulpit, in legislative bodies, in the public press, in public lectures, in lengthy published treatises, in essays and dissertations by some of the most eminent members of the medical profession. The citizen has not only considered it while engaged in his ordinary avocations and pursuits, but also frequently when called upon to discharge the duties of an elector.

Powerful organizations now exist and for a long time have existed, not only for the purpose of considering this subject, but to teach and carry out those views relating thereto by legislation or otherwise.

Time, brains, money, and industry have not been spared to obtain all possible information upon this subject, and to advance every possible argument relating thereto.

There is no information upon this subject which has not already been obtained and published for the information of the public; no argument relating thereto but what has been already made.

For forty years has this subject been vigorously and aggressively agitated, discussed, and considered by the people. It is an insult to their ability and intelligence to say that they are not informed upon this subject.

It is a novel proposition that Congress should investigate a subject without possessing the power to carry out by proper legislation the conclusions arrived at. The subjects upon which Congress is called to

act are already sufficiently numerous and extended to demand all its time and attention.

If Congress well and faithfully discharges and performs all the duties and power that legitimately belong to and devolve upon it, the people will be content. The legislatures of the several States will not, in the discharge and performance of theirs, be found wanting. When they need the advice of Congress, they will undoubtedly ask therefor.

The State legislatures have not been found so wanting that it has become necessary for Congress to usurp (even by advice) their duties and powers.

The minority of your committee are of the opinion that the commission proposed would not throw any new light upon this question or afford any additional information relating thereto (and without questioning the motives or sincerity of any member of this House favoring this bill); that the same is one of those numerous measures originating outside of the halls of legislation, under the guise and pretense of some supposed great public benefit, the real purpose the adoption of some scheme for personal advancement or selfish interests, without reference to the interests of the people; that the only practical results if this bill becomes a law will be to afford more places for place-seekers and placemen, and to open another drain from the already well-drained Treasury.

The bill proposes that the commission shall expire in two years. This is very plausible. We all know what this means. It is only an entering wedge, commencing with an unpretending commission, ending with a bureau with all its paraphernalia, clerks, &c.

The minority of your committee, therefore, recommend that the bill do not pass.

GABR. BOUCK.  
THOS. WILLIAMS.  
JOHN C. NICHOLLS.





**DUTY ON BIBLES IN CHINESE LANGUAGE.**

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**MARCH 27, 1880.**—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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**MR. TUCKER**, from the Committee on Ways and Means, submitted the following

**R E P O R T :**

[To accompany bill H. R. 4424.]

*The Committee on Ways and Means, to whom was referred bill H. R. 4424, respectfully report :*

**That it is stated and believed that the Bible and other religious books are printed in China in the language of that country, and are not printed in this country.**

**For distributing these books gratuitously among the Chinese population in this country it is proposed to admit these books in Chinese language to be imported duty free.**

**This government cannot fail to respond to this application favorably. Your committee report back said bill, with a recommendation that it do pass.**



W. S. KIMBALL & CO. ET AL.

MARCH 27, 1830.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TUCKER, from the Committee on Ways and Means, submitted the following

## REPORT:

[To accompany bill H. R. 5387.]

*The Committee on Ways and Means, to whom was referred the petition of William S. Kimball and others, report :*

That they have examined the facts of the case set out in the petition, and find that in many of the cases, all of which are included in the provisions of the bill herewith reported, the facts were these :

The act of March 3, 1875, which increased the rate of tax on tobacco from 20 to 24 cents per pound, and on cigars from \$5 to \$6 per thousand, was approved by the then President, in the afternoon of the 3d of March, 1875, probably between 5 o'clock and 9 o'clock p. m. In the morning and fore part of the day, stamps were affixed to tobacco and cigars according to the law in force prior to that day. The Commissioner of Internal Revenue ordered, upon his view of the law, that all tobacco and cigars stamped on that day were, by the legal fiction which disregards fractions of a day, and by relation to the first moment of the day, subject to the act aforesaid as being the law during the whole of that day.

A test case was made, which went to the Supreme Court, and is reported, under the name of *Burgess vs. Salmon*, in 7th Otto's Reports.

The Supreme Court held that the act of March 3, 1875, became law only at the instant of the President's signature, and did not supersede the previous law, which therefore continued in force until the moment the new act was signed.

The committee find that all the claims favorably reported and provided for in the bill, were for the additional tax assessed after the tobacco and cigars were stamped under the law in force before the act of March 3, 1875, became a law, and all said additional taxes were paid by the several parties under protest, as fully appears by the evidence.

The conclusion of the committee is, that the collection of all money as aforesaid was without warrant of law, and should be refunded.

The committee report the accompanying bill in favor of all those who paid the assessments aforesaid, under the circumstances stated, and recommend its passage.



WILLIAM J. POLLOCK.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. KELLEY, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. No. 1834.]

*The Committee on Ways and Means, to whom was referred the bill (H. R. 1834) for the relief of William J. Pollock, late collector of internal revenue for the second district of Pennsylvania, have considered the same, and submit the following report:*

Pollock was collector of internal revenue for the second district of Pennsylvania prior to the 12th day of February, 1875, and on that day caused to be put up in six packages, and sent to the Commissioner of Internal Revenue, in Washington, twenty-four special-tax stamp-books, containing the stubs or coupons of special-tax stamps issued during and for the year 1874, of various denomination, representing a nominal money value of \$3,433.33½, though of no actual value to any one but said Pollock, and only to him for the purpose of obtaining proper credit at the Treasury Department in the final adjustment of his accounts as collector. These several packages were duly and fully stamped for transmission by mail, and directed by printed labels to the Commissioner of Internal Revenue, and deposited in the post-office in the city of Philadelphia, but failed, for some reason unknown to said Pollock, to reach the office of the Commissioner. Diligent but unsuccessful efforts have been made to trace and discover them.

The accounting officers of the Treasury refuse to give him credit for them in the settlement of his accounts, on the ground that they are not authorized by law; and he stands charged with said amount on the books of the Treasury Department.

The following letter from the Commissioner of Internal Revenue shows that this approval is withheld simply for want of authority, as the claim is believed to be an eminently meritorious one:

TREASURY DEPARTMENT,  
OFFICE OF INTERNAL REVENUE,  
Washington, March 22, 1880.

SIR: In reply to your verbal inquiry relative to the claim now pending in Congress which has been made by W. J. Pollock, late collector of internal revenue at Philadelphia, who asks relief on account of certain special-tax stamps and coupons lost while in course of transmission to this office by mail, I have to say that, from the evidence filed here, the claim is believed to be an eminently meritorious one, and if this office

were authorized by law to make an allowance in such cases, the evidence is of so conclusive a character that I have no hesitation in saying that the claim would be promptly allowed.

Respectfully,

GREEN B. RAUM,  
*Commissioner.*

Hon. W. D. KELLEY, M. C.,  
*House of Representatives, Washington, D. C.*

The committee find that the coupons were lost without any fault by him, and that he is justly entitled to the credit claimed, and therefore recommend the passage of the accompanying bill.

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WILLIAM D. MARTIN.

MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GARFIELD, from the Committee on Ways and Means, submitted the following

## REPORT:

[To accompany bill H. R. 5388.]

*The Committee on Ways and Means, to whom was referred the petition of William D. Martin, of Bedford County, Virginia, report as follows:*

In 1877 the petitioner, who was a distiller of brandy from fruit (No. 657) in said county and State, had his warehouse in a corn-house for the season ending April, 1878. He had manufactured 47 gallons of brandy, which he stored in said warehouse. A great flood in James River occurred in November, 1877, which swept away the corn-house, with the brandy, and the dwelling-house and other out-houses of the petitioner.

The assessment was nevertheless made on the brandy (as by law the assessor was bound to do), and for delay in payment, resulting from his losses, a penalty attached, in all \$47.24, which petitioner paid.

By the act of God, petitioner lost the property on which the tax was assessed, and hence its value, including the tax. No relief could be given by the Internal Revenue Department, and therefore he appeals to Congress.

Your committee think the tax and penalty should be refunded, and report the accompanying bill for that purpose, with a recommendation that it do pass.





SAMUEL HARPER.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CONGER, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 5389.]

*The Committee on Ways and Means have had under consideration the application of Samuel Harper, praying to be relieved from the payment of \$2,510, charged to him by the Commissioner of Internal Revenue, for that amount of revenue stamps, and submit the following report:*

Samuel Harper was postmaster at the city of Houston, Tex., from 1866 to 1869, and in December, 1866, was made agent for the sale of internal-revenue stamps, and had received for sale a large amount of stamps, which he kept under lock and key in the post-office. In March, 1867, Captain Rose, of the United States Army, was in command of the forces stationed in the city of Houston. During the occupancy of the city, a soldier belonging to the command was charged with theft of money from a citizen and deserted the Army. The deserter was a citizen of Houston when enlisted. The commander, believing him to be still in the city, had a letter addressed to him and placed in the post-office, and stationed a soldier in the office to arrest him when he came and called for the letter. The soldier remained in the office a week waiting for the deserter to come and call for the letter. During the time Mr. Harper kept his revenue stamps in a locked box, but where the soldier on duty in the office could see him when handling them in selling to persons who would call for them. About a week after the soldier had been on duty in the office, the commander notified Mr. Harper that he also had deserted, and advised him to make examination and see if he had stolen anything from his office before he left. On going to his office and making an examination he found he had lost revenue stamps of the value of \$2,510 within the last twenty-four hours. He immediately set persons to work to overtake him if possible and arrest him. They failed to apprehend him, but found that a firm in the city and one of the banks had purchased revenue stamps from him. The firm had purchased large amounts of stamps from him, which he claimed to have found on a railroad track. The banker recognized the soldier as being the same he had seen on duty at the post-office, but he had not heard of the robbery at the time of purchase.

Your committee are satisfied that the theft was committed by the soldier who was placed in the post-office by military orders, and that the postmaster ought not to be held responsible for a loss which he had no power to prevent. They therefore report the accompanying substitute and recommend its passage.



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**DUTY ON BARLEY MALT.**

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**MARCH 27, 1880.**—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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**Mr. MORRISON**, from the Committee on Ways and Means, submitted the following

**R E P O R T :**

[To accompany bill H. R. 4585.]

*The Committee on Ways and Means, to whom was referred bill H. R. 4585, submit the following report :*

By the provisions of the reciprocity treaty of 1854 with Canada, barley, classed as raw material, was admitted into the United States duty free, while barley malt, classed as a manufacture, paid 20 per cent. ad valorem. Since the abrogation of the treaty in 1866, barley has paid a specific duty of 15 cents per bushel, while malt remained subject to only the same ad-valorem duty of 20 per cent. as when barley out of which it is made paid nothing. At times both articles, the raw material and manufactured article, have paid the same duty under these rates. Out of this condition of things a controversy arose between the maltsters and brewers as to the relative duty which these articles should pay. This resulted in an agreement that while barley paid 15 cents per bushel, malt should pay a duty of 25 per cent. ad valorem. The consumer and producer thus agreeing, your committee have accepted these rates as *relatively equitable*, and recommend that the bill (H. R. 4585) fixing *these rates* be passed.



## IRON MOUNTAIN BANK, SAINT LOUIS, MO.

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MARCH 27, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MORRISON, from the Committee on Ways and Means, submitted the following

### REPORT:

[To accompany bill H. R. 3155.]

*The Committee on Ways and Means, to whom was referred the bill H. R. 3155, report as follows:*

The Iron Mountain Bank, of Saint Louis, Mo., asks to have refunded to it \$2,333.70, the amount of taxes paid (in stamps) on 65 barrels of spirits on which taxes had been previously paid.

It appears from the statements of D. P. Dyer, esq., then district attorney for the eastern district of Missouri, and his then assistant, who is now district attorney for said district, William H. Bliss, esq., and from papers on file in the Treasury Department, that in August, 1876, the Treasury Department issued an order releasing forfeiture of said barrels of spirits (whisky) belonging to said bank, which had been libelled, declared forfeited, sold by United States marshal, and restamped, under the following circumstances, as stated to the Treasury Department by District Attorney Dyer:

SAINT LOUIS, January 2, 1877.

SIR: I beg to state that proceedings for the forfeiture of 65 barrels of whisky were commenced while I was United States attorney for this district. The Iron Mountain Bank claimed the whisky on the ground that they had loaned to the parties originally owning the same a large amount of money, to secure which the bank had taken in good faith as collateral security a warehouse receipt embracing the above lot of whisky. Under our State laws such receipts were and are still negotiable instruments, but proceeding under the adjudications of the Supreme Court of the United States, it was held that the statute of the State did not protect such persons, even though the same was taken in good faith and with no previous knowledge of fraud by the distiller. This lot of whisky was tax-paid and the stamps properly affixed. The property was not bonded, as in similar cases, for the reason that it was understood and agreed at the time that the bank should lose no right to claim the proceeds of the sale. A forfeiture was had, and the property sold. Out of the proceeds of the sale an amount sufficient to restamp the spirits was retained by the marshal, with which new stamps were bought and affixed on the barrels; the government thereby realizing double the tax imposed by law upon distilled spirits. The stamps placed thereon by the distiller were destroyed and those purchased by the marshal affixed in their stead.

This case stands, so far as the equities are concerned, on precisely similar footing with other banks which applied for and obtained remission of the forfeiture, only differing in this, that those who applied for and obtained relief bonded the whisky claimed by them, and permitted judgment to go on the bond. This obviated the necessity of buying new stamps for the whisky bonded. In this case, as I have said, the whisky was sold, and under the statute it became necessary to restamp it. Had this been understood at the time, of course the other direction would have been taken.

I have given you a statement of the facts as they existed, and I know of no reason why this claimant is not entitled to the same consideration as others similarly situ-

ated, and I beg to recommend that the relief they ask, consistent with your duties under the law, be granted.

Very respectfully,

DAVID P. DYER,  
*Late United States Attorney.*

The Hon. SECRETARY OF THE TREASURY,  
*Washington, D. C.*

P. S.—At the time the forfeiture was had it was difficult to get at the barrels of whisky libeled. They were with a large number of barrels of other whisky claimed by certain other claimants and we could not get them out, and at my suggestion a forfeiture was permitted with the understanding that by this course the rights of the claimant should not be prejudiced. I trust that such may be the result.

D. P. DYER.

Your committee is of the opinion that, as the claimant was without fault in the matter causing said forfeiture of its property, it should not be required to incur penalties or losses not exacted of other owners of property similarly situated, and therefore recommend that the bill be passed.

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**MARGARETTA BENDER.**

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MARCH 27, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MORRISON, from the Committee on Ways and Means, submitted the following

**R E P O R T :**

[To accompany bill H. R. 3902.]

*The Committee on Ways and Means, to whom was referred the bill H. R. 3902, submit the following report:*

Margaretta Bender, of Saint Louis, Mo., asks to have refunded to her \$450 (the amount, less \$50, which went to the informer), paid by her as a compromise with the government for the alleged violation of the revenue laws by her insane husband, under the following circumstances: Her husband, John Bender, who was at the time a retail liquor dealer, was an inmate of an insane asylum the first half of the year 1877, after which he was supposed to be cured, and during the last half of that year was at his home and place of business. In January, 1878, his malady returned, and soon after he had to be returned to the insane asylum as an insane person. When Bender was at home, after having been first in the asylum, his place was frequented by several loungers and ex-bar-tenders, who had access to his cellar, which contained twenty to thirty barrels of whisky in original packages. Soon afterward the liquor in several of these barrels was discovered to be reduced in strength, some of the liquor having been withdrawn and replaced with water. Some of the ex-barkeepers informed the revenue officers of the fact, and the saloon and liquors, valued at \$1,900, were seized for a violation of the revenue laws. With her husband in the insane asylum, herself sick, and the mother of six children, one an infant two weeks old, acting under the advice of friends and an attorney, she took a compounder's and a wholesale liquor dealer's license, in addition to the retail license which her husband already had, and paid all accrued costs. She then offered to pay \$500 as a compromise, which was accepted by the Commissioner of Internal Revenue. The commissioner says he accepted the offer of \$500 on information that Bender's insanity was feigned, but afterward became satisfied that this was not true, and that Bender was insane before the act was committed, and has been confined in an insane asylum ever since, and that neither Bender nor his wife, the claimant, were in a condition to be held responsible for their acts, and that relief should be granted.

Your committee therefore recommend that the bill be passed.





WILLIAM H. THOMPSON.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed..

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Mr. CARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 346.]

*The Committee on Ways and Means, to whom was referred the bill (H. R. 346) for the relief of W. H. Thompson, beg leave to report:*

That during the year 1866 William H. Thompson was collector of internal-revenue for the fifth collection district of the State of North Carolina, having his principal office in Greensborough, in Guilford County, in that State. William E. Thompson was one of his deputies, and as such deputy he was sent, on or about the 5th November, 1866, to the town of Ashborough, in the county of Randolph, for the purpose of collecting certain internal-revenue taxes then due. Ashborough is about twenty-five miles from Greensborough. On the morning of the 9th November, 1866, while the deputy was on his return from Ashborough and about ten miles from that place, he overtook three men on the road, who attacked, overpowered, and robbed him of the sum of \$2,709.60, which he had collected, and then held as such collector. No part of said money has ever been recovered.

All the facts attending the robbery were immediately made known to the collector and to the sheriff of the county, and all reasonable and proper efforts were made to secure the capture of the robbers, but without avail. Mr. Joseph Causey, one of the officers, was at the place within two hours after the robbery was committed, and saw the tracks of the robbers in the road, as before described to him by the said William E. Thompson. William H. and William E. Thompson are both shown to be worthy and reliable men.

In the settlement of William H. Thompson's accounts as collector it was ascertained that there was a balance due the government, and suit was instituted against him and his sureties upon his bond. The defendants, among other things, insisted that they were entitled to a credit of \$2,709.60, the amount taken from William E. Thompson by the robbers. The matter was referred to the Treasury Department before the trial. On the 5th of September, 1874, Mr. V. S. Lusk, United States district attorney, to whom the department had referred the case for examination and report, reported that the defendants were entitled to sundry credits, and among others to this credit, \$2,709.60. At the spring term of the district court of the United States for the western district of North Carolina, begun and held in the city of Greensborough, on the 1st Monday of April, 1875, Hon. R. P. Dick presiding, Mr. Lusk, the said attorney, was authorized by a telegram from the Hon. Bluford Wilson, the

then Assistant Solicitor of the Treasury, to take judgment, with consent of the defendants, for the sum of \$7,215.03. This judgment allowed all the credits except the sum lost by the robbery. The telegram closed with a promise to write. Thereupon an execution was issued against the defendant and his sureties for the sum of \$4,505, with instructions from the district attorney that the remainder be suspended, according to the terms of compromise, until after the close of the next session of Congress. The \$4,505 was paid by the defendants during the month of November, 1875.

In 1876 the claim was presented to Congress and referred to the Committee on Claims, but owing to the large amount of business before that committee the claim, though pressed, was not considered until the third session of the Forty-fifth Congress. On the 13th of December, in that session, the committee, through Mr. Warren, reported the claim to the House with a favorable recommendation, and it took its place upon the Calendar, but was never reached. From time to time the department has authorized further suspension of the execution until the present, awaiting the action of Congress.

The committee is of the opinion that the claim for relief is a meritorious one, and accordingly recommend the passage of the accompanying bill.

ALEXANDER SMILEY.

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5390.—Committed to the Committee of the Whole House and ordered to be printed.

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Report, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 5390.]

*Committee on Ways and Means, to whom was referred House bill No. 5390, report as follows:*

Alexander Smiley, of Mississippi County, in the State of Missouri, is relieved from the assessment of \$874.38 made against him, as he believes, by officers of the Internal Revenue Bureau. The facts are as follows: Mr. Smiley is proprietor of distillery No. 1, in Mississippi County and State. On the 3d and 4th of February, 1875, his distillery was surveyed by Alonzo B. Carroll, collector of his district, aided by J. Coleman, his assistant, and the capacity of the distillery was determined by their survey at  $3\frac{1}{2}$  gallons of spirits to 1 bushel of grain. The distillery was operated from that time till the 23d of April following, at only  $2\frac{1}{2}$  gallons of spirits per bushel, instead of  $3\frac{1}{2}$ . A resurvey was made, and the capacity of the distillery fixed at  $2\frac{1}{2}$  gallons to the bushel, and since then it has been making that amount, and only paying the tax on that amount, and has paid the taxes to the government regularly, on all spirits made under both surveys. There is no claim that the petitioner failed to pay any portion of the taxes on the spirits actually made, the charge is for the difference between what he made and what he ought to have made by the first assessment. The evidence shows fully that the distillery was operated skillfully, and it produced to its full, real capacity; that it was under the control of the storekeeper all the time, and that it did not produce more spirits than was assessed against it, because it was a physical impossibility, in the language of the witness, who is the same party that made the assessment. He says when he made the survey he was without experience, and very doubtful as to the capacity of the distillery reaching the amount assessed, and that it was an honest guess with him. He says that at the time no means of accurate information by which to determine the exact producing capacity. That his action was governed by the established rules of the Internal Revenue Bureau, series 7, No. 7, and 16. By reference to these rules it will be seen that when a distillery is surveyed under  $3\frac{1}{2}$  gallons to the bushel of grain, the collector takes to the bureau an explanation of the reasons for so low an assessment. Three and a half gallons, by these rules, is the average amount of spirits to a bushel of grain, and a new officer just entering upon a

new field of duty might very naturally fear to incur an unprovoked opinion from his superior by making an assessment, and his first, below the average.

The erroneous assessment was made, however, and the distillery was operated under it, and the proprietor incurred the legal liability to pay the amount claimed, but he insists, and it is thought very justly, that the amount is unjust, and he should be released from its payment. The evidence shows Mr. Smiley to be an honest and upright man, who has promptly paid all his taxes, and never given the department cause of complaint. And it is admitted that he has fully paid all the taxes on all the spirits produced by his distillery, and that all other distilleries in that district, of the same size and character, have only produced on an average  $2\frac{1}{2}$  gallons to the bushel of grain. It would be unjust for the government to contend for an advantage it had obtained by the confessedly mistaken assessment of its officers. A bill is therefore reported for the relief of Mr. Smiley, and its passage recommended.



WILLIAM R. WILMER.

MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PHELPS, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 301.]

*The Committee on Ways and Means, to whom was referred the bill (H. R. 301) for the relief of William R. Wilmer, late collector of internal revenue for the fifth district of Maryland, have had the same under consideration, and submit the following report:*

William R. Wilmer was appointed collector of internal revenue for the fifth district of Maryland on the 1st day of May, 1872, and continued in said office until the 1st day of January, 1876, and during said term had his office at Saint Denis, in the county of Baltimore.

On the night of April 27, 1875, his office was entered by burglars and his safe blown open and robbed of United States beer-stamps of the value of \$5,446.75; cigar-stamps, \$581.25; tobacco-stamps, \$18; cash, \$1,026.66; in all, \$7,072.66, the property of the government.

Immediately on the discovery of the robbery he telegraphed the Commissioner of Internal Revenue to send some person to investigate the case, which was done, and a thorough investigation made by an agent, who reported the facts to the Commissioner, and acquitted the collector of all fault. Wilmer offered a reward of \$1,000 for the recovery of the property and the conviction of the burglars, and at once placed the matter in the hands of experienced detectives. Suspected parties were several months afterward arrested in New York, in whose possession was found a large portion of the stamps, amounting in value to \$5,259.12, which were recovered.

The committee find that the robbery was perpetrated through no fault, collusion, or privy of said Wilmer, and in consequence of no want of reasonable diligence or care on his part for the protection of the property: that he made every proper effort for its recovery, in doing which he subjected himself to considerable personal sacrifice and expense. He stands charged on the books of the Internal Revenue Office with \$1,813.54, which is the difference between the amount stolen and that recovered, and can obtain no settlement of his account without paying that amount from his private funds, unless the Secretary of the Treasury is authorized to credit him with it.

The committee are of the opinion that, under the established policy of Congress to furnish relief in cases of loss occurring in such manner, he is entitled to the redress which he seeks, and therefore recommend the passage of the bill.



W. J. TAPP & CO.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. PHELPS, from the Committee on Ways and Means, submitted the following

R E P O R T:

[To accompany bill H. R. 4622.]

*The Committee on Ways and Means, to whom was referred the bill (H. R. 4622) for the relief of W. J. Tapp & Co., of Louisville, in the State of Kentucky, have had the same under consideration, and submit the following report:*

The parties asking relief in this case are W. J. Tapp & Co., of Louisville, in the State of Kentucky, manufacturers of goods from jute fiber. In May, 1876, they imported certain machinery for their business, not then made in the United States, to be used by them exclusively in the manufacture of that fiber, and which was adapted to and could be used for no other purpose. By the provisions of section 7 of the act of February 8, 1875, such machinery was entitled for two years thereafter to entry free from duty.

On the 12th of November, 1875, the Secretary of the Treasury decided that no machinery was exclusively adapted to such manufacture.

When the machinery of Tapp & Co. arrived at the port of entry they claimed it was entitled to be admitted free under the law, but the claim was denied, and the duties and charges, amounting to \$240.10 gold, were paid by them under protest. Other importers of similar machinery pursued the same course.

The Secretary of the Treasury subsequently, on the 23d of March, 1877, reversed his former decision and admitted duty free similar machinery imported in October, November, and December, 1875, by Buchanan & Lyall, of New York.

Tapp & Co. afterward applied to the department for a rebate of the duties they had paid, and were refused on the ground that they did not appeal from the original decision of the appraiser declaring their machinery dutiable. The law provided for such an appeal, but having paid the duties under protest they deemed it unnecessary, and naturally supposed it would be unavailing to appeal to a tribunal which had then recently as to other parties decided the same question adversely to their claim.

The committee are of opinion the parties are entitled to the relief asked for, and recommend the passage of the accompanying bill.





WILLIAM H. POWELL.

MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PHELPS, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 5391.]

*The Committee on Ways and Means, to whom were referred the petition and an accompanying bill, both unnumbered, for the relief of William H. Powell, surviving member of the late copartnership of W. H. Powell & Co., of which F. A. McDowell, deceased, was formerly a member, have had the same under consideration, and submit the following report:*

The aforesaid firm were in business as distillers at Chambersburg, in the third collection district of Ohio, from some time in November, 1868, to the 26th day of January, 1869. During this time the monthly assessments upon their business were regularly made by O. C. Maxwell, the United States assessor for that district, were promptly paid by the firm, including an erroneous over-assessment of \$65.76 hereinafter mentioned, and the several amounts paid by them, aggregating \$834.33, were receipted for in full by D. W. Schaeffer, United States collector for that district.

Powell & Co. found it impossible to prosecute their business successfully on account of the scarcity of water, and the bad quality of grain then to be had, and on the said 26th day of January, 1869, finally discontinued it. The deficiency of water was so great they were unable to operate their distillery regularly at even its minimum producing capacity, and were obliged to reduce and then increase it from time to time, and to make temporary suspensions to accommodate their business to the deficiency and changing supply of water.

Prior to their commencing business, and when those changes and temporary suspensions were made, and when they finally discontinued business, they gave the proper notice, and made the proper applications to the proper revenue officers, and obtained the proper permits required by law. The assistant assessor, however, in making returns to his superior officer of the aforesaid temporary suspensions, omitted to state in some of his certificates, what was in fact true, that there were at those times no mash, wort, or beer in the distillery or on the premises. Upon each notice of suspension or resumption of business, the proper locks, seals, and fastenings were placed upon, and removed from, the doors, tubs, &c., by the proper officers.

After the final discontinuance of the business, Mr. Maxwell went out of office as United States assessor, and was succeeded by George G. Johnson, who, on account of technical defects and omissions in the certificates of the assistant assessor before mentioned, made a reassessment on Form 89, for the month of January, 1869, and upon the maximum capacity of the distillery. Mr. Maxwell, who was assessor during the

entire period in which Powell & Co. were in business, says, in an affidavit on file in the department :

It was my duty to make the assessment, and it was made with full knowledge of the facts. It was reported to, and confirmed by, the Commissioner of Internal Revenue, and the parties, on my recommendation, settled the same in full and quit the business of distilling. I am of the opinion, and then was, that they were assessed to the full amount authorized by law, and believe that any reassessment, such as is made in Form 89, is erroneous, and consequently illegal.

The reassessment so wrongfully made amounted to \$1,491.87, which Powell & Co. declined to pay, and the property was seized by the government and sold for \$226.50, which was the sum needed to cover the expenses of seizure and sale. The government bid it in, and subsequently sold it for the same amount. Suit was also brought on the distiller's bond, and judgment obtained, after the death of McDowell, the junior partner of Powell & Co., for \$1,586.56, which covered the reassessment, penalty, and interest. McDowell died in 1870, and Powell, as surviving partner, paid \$206.28 on the judgment in 1874, and the Commissioner ordered that it be no further enforced.

It hereinbefore appears that Powell & Co. were assessed under the first assessment which was paid by them \$834.33, but an inspection of the items of the assessment clearly shows it should have been but \$768.57, establishing the commission of an error against the claimant and in favor of the government of \$65.76.

A portion of the machinery and other property, after its seizure and while in the custody of the United States marshal, prior to its sale by the government, was clandestinely removed from the premises by persons unknown to Powell & Co., and has never been accounted for, returned, or recovered.

The seizure, and the first and subsequent sales of the property by the government, were made while the claimant was absent from the State of Ohio; were without his knowledge, and he had no opportunity to bid in the property or to procure it to be done, or to appeal for relief to the proper officer of the Treasury Department.

The property so seized and disposed of by the government, in the attempt to enforce and collect an erroneous assessment and tax, was estimated by Powell to be worth \$7,000, and he claims that he is entitled to be indemnified for its full value, notwithstanding it was sold by the government for a nominal sum, which was merely adequate to cover expenses of seizure and sale.

A majority of the committee are unwilling to sanction this claim, for the reason that Powell ought to have had some agent or friend to look after the property in his absence, or to repurchase it from the government at the price for which it was sold, or to redeem it within the period limited by the law. They think a precedent establishing the liability of the government for an amount greater than it received, where no fraud or unfairness in the sale was shown, would be both dangerous and unjust.

The committee, however, agree that relief should be granted with respect to the over-assessment of \$65.76; the amount which the government received from the sale, \$226.50; and the amount collected on the bond, \$206.28; making in the aggregate \$498.54; and that the judgment in the action on the bond should be canceled, and both Powell & Co., and W. H. Powell as survivor, and their and his sureties, relieved from all further liability and obligation of every kind, and recommend the passage of the accompanying substitute for the bill referred to them.

APPLEBY & HELM.

MARCH 27, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. DUNNELL, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 196.]

*The Committee on Ways and Means, to whom was referred the bill (H. R. 196) authorizing the removal of tobacco in process of manufacture, have had the same under consideration, and report:*

That Jacob C. Appleby and George W. Helm, composing the firm of Appleby & Helm, are wholesale dealers in manufactured tobacco in the city of New York.

That their factory for the treatment and preparation of tobacco for market is located at Spotswood, Middlesex County, third district of New Jersey.

That the packing and stamping of the manufactured article in proper form for sale requires a large force of employés, which said firm find it impossible to procure in the vicinity of their factory.

That in the city of New York the firm can readily obtain all the help needed to prepare their goods for sale.

The committee recommend the passage of the bill authorizing said firm of Appleby & Helm to remove in bulk packages of cut tobacco and snuff in process of manufacture for sale from their factory in Spotswood, N. J., to their factory in the city of New York, under the permit and supervision of the Commissioner of Internal Revenue, as provided in the bill.



J. H. RIVES.

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0.—Committed to the Committee of the Whole House and ordered to be printed.

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from the Committee on Ways and Means, submitted the following

## REPORT:

[To accompany bill H. R. 5392.]

*tee on Ways and Means have considered the memorial of J. H. Virginia, with the accompanying evidence, and submit the following report:*

was collector of internal revenue for the fifth district of and John C. Henry his deputy. February 5, 1874, it was discovered that this deputy was an embezzler to the extent of \$36,241, and fled. Thereupon Mr. Rives took prompt and efficient measures for arrest and the recovery of the funds. The deputy was arrested, convicted, and sentenced to four years in the Albany Penitentiary; and there was recovered from him in money and by sale of property over \$31,000, leaving a balance of deficit of about \$5,234, ultimately paid by his sureties; thus affording the remarkable evidence of a heavy embezzlement of government funds and no loss to the United States. It is entirely evident that this recovery was very largely due to the promptness, energy, and fidelity of Mr. Rives. The records of the Internal Revenue Department show that Mr. Rives collected from March 11, 1871, to January 1, 1879, over \$1,500,000, and that every dollar of this immense amount was paid into the Treasury. To bring this defaulting deputy to justice, and to recover the \$36,000 embezzled by him, cost this collector, in actual and cash disbursements, \$885.57, for which he asks to be reimbursed. The Commissioner of Internal Revenue, under date of February 1, 1879, in relation to this prayer—

is entirely entitled to commendation for the promptness and energy displayed in the prosecution of this defaulting officer, and the recovery of the money, and the deposit of the same within a reasonable time. \* \* \* Under the circumstances the Commissioner is entitled to your favorable consideration.

The Committee concur entirely with the honorable Commissioner in recommending the passage of the accompanying bill.



ROBERT S. WYLD.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. FRYE, from the Committee on Ways and Means, submitted the following

## R E P O R T :

[To accompany bill H. R. 5393.]

*The Committee on Ways and Means, to whom were referred a memorial and bill (H. R. 5393) for the relief of Robert S. Wyld, of Edinburgh, have examined the evidence submitted, and report :*

That Robert S. Wyld, in 1870, became the owner, by purchase, of the bonds named in the accompanying bill; that in September, 1876, they were stolen from him; that energetic measures were taken for the apprehension of the thieves and the recovery of the bonds; that the thieves were discovered, tried, and convicted; that the bonds were never restored; that the testimony of one of the thieves, with that of his wife and child, tends to prove that the bonds were burned; that neither they nor the coupons have ever been presented for payment to the Treasury Department.

All these facts are conclusively shown, except the destruction of the bonds, and this is made probable by the testimony and the circumstances. The law authorizes the Secretary of the Treasury to redeem whenever the destruction of bonds is made to appear certainly, and certainty is not arrived at in this case, hence the propriety of legislation. Your committee recommend the relief asked for, and the enactment of the accompanying bill.





## A COURT OF PENSIONS.

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1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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RES, from the Select Committee on the Payment of Pensions, Bounty, and Back Pay, submitted the following

### R E P O R T :

[To accompany bill H. R. 5394.]

*Committee on the Payment of Pensions, Bounty, and Back Pay, was referred the bill (H. R. 4652) organizing a court of pensions, the same under consideration, and beg leave to make the following*

Committee have fully considered the bill referred to them organizing a court of pensions, and have come to the conclusion that a court should be organized for the purpose of relieving Congress of the burden of the floods of pension bills introduced at every session for the speedy disposing of the hundreds of thousands of applications pending in the Pension Department for pensions. Committee have adopted a substitute for said bill, and report it to the House with the recommendation that it do pass. The substitute retains the main features of the original bill, only changing some of its provisions and enlarging to a certain extent the jurisdiction of the court.



## A COURT OF PENSIONS.

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Mr. THOMAS, from the Select Committee on the Payment of Pensions, Bounty, and Back Pay, submitted the following as the

### VIEWS OF THE MINORITY.

[To accompany a bill submitted by the minority of the committee as a proposed substitute for H. R. 4652.]

The minority of said committee are unable to agree with the majority in the substitute submitted by them, and report herewith a substitute therefor.

We recognize the fact that Congress is burdened with an immense number of bills providing relief in cases which have been rejected by the Pension Bureau on the ground of their being outside of the general law granting pensions, and resting wholly upon equitable grounds, and that large numbers of cases are being rejected for other reasons unsatisfactory to claimants; and the public interests seeming to demand and require a more careful examination of this class of cases than the Commissioner of Pensions is able to give them, burdened as he is with the great amount of work in his bureau, we are in favor of the establishment of some tribunal to sit in review of the adverse decisions of the commissioner and grant another hearing to claimants who feel aggrieved thereby, but we cannot agree with the majority in the remedy proposed by their substitute. By their bill they propose to establish a court, independent not only of the Interior Department, which has always had jurisdiction and control of pension matters, but independent of the Department of Justice; a court where claimants are forced into the unhappy position of parties plaintiff and the government into the undesirable attitude of defendant; a court where the judges are required to sit in impartial judgment on the law and facts, and yet are the attorneys and guardians of the rights of the government; a court of general jurisdiction in pension matters, having the power to try cases *de novo* as well as to review decisions of the Commissioner of Pensions, and having such extended and comprehensive equity jurisdiction as to authorize it to act contrary to and in defiance of the records of the War Department.

The substitute proposed by the minority authorizes the establishment of a board of review, to consist of two lawyers learned in their profession and a surgeon skilled in his profession, to have the dignity of Presidential appointment and Senatorial confirmation, who shall act subordinate to the Interior Department, but independent of and in no way under the control or direction of the Commissioner of Pensions, having authority to review the record as made before and by the Commissioner of Pensions, and certify their determinations to the Secretary of the Interior.

The substitute proposed by the majority would result, we believe, in transferring the greatest part of the business of the Pension Bureau to that court. Claimants could easily withhold their evidence from the

Commissioner of Pensions and submit it on the final hearing, and in this way the real merits of the claim would not be presented to the commissioner, and much business would thereby be forced upon the court which could be more satisfactorily and speedily disposed of by the Commissioner of Pensions, while the plan proposed by the minority confines the hearing before the board to a review of the evidence filed in the office of, and upon which the decision of the commissioner is based. If the claim is rejected for want of sufficient evidence, under our plan the case can be remanded to the commissioner for further evidence and subsequent action. We believe this method of review would give claimants a much easier, cheaper, and speedier relief than can be afforded by the ponderous, complicated, and expensive machinery of a court, at the same time affording to Congress the full measure of relief promised by the substitute submitted by the majority.

Trials *de novo*, in the proposed court, would result in a substantial denial of relief to all those whose cases come late on the docket, while a board of review, acting without the forms, machinery, and delays attending trials in court, could dispose of cases with dispatch.

We therefore recommend the adoption of the substitute submitted by the minority.

JOHN R. THOMAS,  
L. B. CASWELL,  
*For the minority.*

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[H. R. 5394, Forty-sixth Congress, second session.]

Mr. THOMAS, representing a minority of the Select Committee on Pensions, Bounty, and Back Pay, proposed the following substitute for the bill H. R. 5394 reported from that committee, viz:

A BILL to establish a board of appeals to review cases where claims for pension, claims for increase of pension, claims for arrears of pension, and application for restoration to the pension-roll, have been or shall hereafter be rejected by the Commissioner of Pensions.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be, and is hereby, established as a subordinate branch of the Interior Department, a board of appeals and review, to be composed of three members, two of whom shall be learned in the law and one who shall be learned in the sciences of medicine and surgery.

SEC. 2. That the members of said board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall hold their office for the term of three years, or until their successor or successors are appointed and qualified, and shall each receive a salary of three thousand five hundred dollars per annum, payable quarterly on the first days of July, October, January, and April of each year.

SEC. 3. That before entering upon the duties of their office, the members of said board shall take and subscribe to a solemn oath to support the Constitution of the United States, and to discharge their duties according to law and to the best of their ability.

SEC. 4. That said board shall be subordinate to and under the direction of the Secretary of the Interior, but independent of, and in no way under the control of, the Commissioner of Pensions.

SEC. 5. That said board shall appoint a clerk, whose duty it shall be to keep a complete record of the proceedings of said board, and who shall receive a salary of one thousand eight hundred dollars per annum, payable quarterly, on the first days of July, October, January, and April, respectively. Before entering upon the duties of his office said clerk shall take and subscribe to a solemn oath to support the Constitution of the United States, and to discharge his duties according to law to the best of his ability.

SEC. 6. That said board shall keep a docket, to be properly prepared under the direction of its members, upon which shall be entered each case which may come before the board for its action.

SEC. 7. That said board is hereby authorized to, and shall, adopt rules of practice regulating proceedings before it, and shall have power to maintain order during its sessions, and punish for contempt.

that said board shall have jurisdiction on appeal to review and determine the claims for pension, claims for increase of pension, claims for arrears of applications for restoration to the pension-roll have been or shall hereafter be adversely to the claimant, either in whole or in part, by the Commissioner of Pensions, including all cases pending and undetermined in Congress, and all cases where the name of a pensioner has been, or shall be hereafter, on the pension-roll.

That upon the organization of said board, or at any time thereafter, the case in which an adverse decision has been rendered by the Commissioner of Pensions shall make application in writing to said board, either by himself or herself or by a duly authorized attorney for an appeal, whereupon the board shall hear the appeal, and shall notify the Commissioner of Pensions that an appeal has been made and granted in such case, and thereupon it shall be the duty of the Commissioner of Pensions, without delay, to transmit all papers, affidavits, or other evidence in his office relating to such case to said board.

That said board shall try and determine all cases brought before it, on the evidence on file in the office of the Commissioner of Pensions and the evidence to be found in the several bureaus of the War Department, and in no case shall any additional evidence, other than that submitted to the Commissioner of Pensions prior to his decision, be considered.

That a majority of said board shall constitute a quorum for the transaction of business, the rendering of decisions, and in case of a disagreement or division of opinion in any case, it shall be informally laid aside, to be finally disposed of at a full meeting of said board.

That said board shall require all arguments submitted either by the claimant or by his attorney to be written or printed, and no one shall be allowed to appear before said board as attorney for a claimant unless he or she be a regularly licensed attorney and counselor at law, in good standing.

That when the decision of the board shall be in favor of the claimant, the attorney may charge a reasonable sum, not exceeding twenty-five dollars, for his or her services in full of all fee or fees for his or her services in such case before said board.

That any attorney who shall charge, ask, demand, or receive, either directly or indirectly, any sum of money, article, or thing, as a compensation or fee for his or her services in prosecuting said claim before said board, shall be guilty of a crime, and shall be forever thereafter disqualified from practicing before said board, and any attorney convicted thereof by any court of competent jurisdiction, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars.

That said board shall, in determining such cases as come before it, give the law a liberal construction with a view to do complete justice to claimants.

That if said board shall find that the claimant is legally entitled to a pension, it shall also find and fix the rate of pension claimant should receive, whereupon the Secretary of the Interior shall cause the name of the claimant, in whose favor the decision has been rendered, to be placed upon the pension-rolls, and he shall receive the pension at the rate fixed by said board.

That if said board shall find that the claimant is not entitled to a pension under the act of the law, but is equitably entitled thereto, they shall so decide, and shall fix the rate at which claimant should be pensioned, and shall submit a report of their decision with the reasons and grounds upon which it is based, together with the evidence in the case, to the Secretary of the Interior, who shall transmit the same to the Speaker of the House of Representatives for legislative action.

That if said board shall affirm the decision of the Commissioner of Pensions, they shall return the case with all the papers and evidence on file to the Commissioner of Pensions, together with the reasons or grounds of their decision; whereupon the claimant shall have the right, if he or she so elect, to submit to the Commissioner of Pensions any further and additional evidence in support of the said claim.



**WRITS OF ERROR TO SUPREME COURTS OF TERRITORIES.**

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**MARCH 27, 1880.**—Referred to the House Calendar and ordered to be printed

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**Mr. KNOTT**, from the Committee on the Judiciary, submitted the following

**R E P O R T :**

[To accompany bill S. 905.]

The Committee on the Judiciary having had under consideration Senate bill No. 905, entitled "An act in relation to writs of error to supreme courts of the Territories," respectfully report the same back with a recommendation that the same be passed.





**46TH CONGRESS, }  
2d Session. }**

**HOUSE OF REPRESENTATIVES.**

**{ REPORT  
No. 608.**

**FEEs OF OFFICERS OF UNITED STATES COURTS.**

**MARCH 27, 1880.**—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

**Mr. KNOTT**, from the Committee on the Judiciary, submitted the following

**REPORT:**

[To accompany H. Mis. Doc. 32.]

The Committee on the Judiciary having had under consideration House resolution providing for the raising of a select committee of five to inquire into and report upon the system of fees, salaries, and emoluments allowed to the officers of the several courts of the United States, respectfully report the same back with the accompanying substitute, which they recommend shall be adopted.

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**PAY OF SUPERVISORS OF ELECTIONS AND SPECIAL  
DEPUTY MARSHALS.**

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**MARCH 27, 1880.**—Referred to the House Calendar and ordered to be printed.

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**Mr. KNOTT**, from the Committee on the Judiciary, submitted the following

**REPORT:**

[To accompany bill H. R. 2142.]

*The Committee on the Judiciary, having had under consideration the accompanying bill (H. R. 2142), respectfully beg leave to report the same back to the House with the following amendment:*

**Amend by adding the following as an additional section:**

**SEC. 5.** That it shall not be lawful for any marshal, deputy marshal, or supervisor of election, or any person acting by their authority, to arrest or imprison on election day any election officer acting as such under and by virtue of election or appointment under any State law for any offense against the election laws of the United States or of any State, but the warrant of process for such offense may be executed at any time after the close of such election day.

**And recommend that the same be so amended and passed.**



**PRACTICE IN UNITED STATES COURTS.**

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**MARCH 27, 1880.**—Referred to the House Calendar and ordered to be printed.

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**Mr. KNOTT**, from the Committee on the Judiciary, submitted the following

**REPORT:**

[To accompany bill H. R. 4140.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 4140) regulating the practice in United States circuit and district courts as to the time and manner of instructing jurors and arguing the cause, respectfully report the same back to the House with a recommendation that the same do pass.



ROGER A. PRYOR.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. KNOTT, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 5395.]

The Committee on the Judiciary, to whom was referred the petition of Roger A. Pryor, of New York, for relief from the political disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would respectfully report the accompanying bill for his relief and recommend its passage.

The petition is hereto annexed and made part hereof.

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*To the Honorable Senate and House of Representatives of the United States of America:*

Your petitioner, Roger A. Pryor, a citizen of the State of New York, respectfully represents:

That by reason of the provisions of section 3, article 14, of the amendments to the Constitution of the United States, he is under political disabilities; that he is, and has been since the close of the war of the rebellion, a peaceable and quiet citizen of the United States; that he submits to and obeys the Constitution of the United States and the laws of Congress in all respects.

Therefore, your petitioner prays that his said disabilities, incurred by reason of his participation in the said war, may be removed.

And, as in duty bound, he will ever pray, &c.

New York, March 8, 1880.

ROGER A. PRYOR.





THOMAS L. HARRISON.

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1880.—Committed to the Committee of the Whole House and ordered to be printed.

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THOMAS L. HARRISON, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 5396.]

Committee on the Judiciary, to whom was referred the petition of Thomas L. Harrison, of Mobile, Ala., for relief from the political disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, respectfully report the accompanying bill for his relief, and recite its passage.  
The petition is hereto annexed and made part hereof.

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*For the Senate and House of Representatives of the Congress of the United States of America:*

Resigned, a graduate of the United States Naval Academy at Annapolis, and came into your honorable bodies that he resigned the position of midshipman in the United States Navy in the year 1861, and became an officer in the Confederate States Army, and as such participated in the late rebellion. He asks leave to file this bill for the removal of his political disabilities; and as in duty bound will

&c.  
Respectfully, your obedient servant,

THOS. L. HARRISON.

ALA., February 14, 1880.

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FRANCIS H. SMITH.

1880.—Committed to the Committee of the Whole House and ordered to be printed.

from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 5397.]

Committee on the Judiciary, to whom was referred the petition of Francis H. Smith, of Virginia, for relief from the political disabilities imposed on him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would hereby report the accompanying bill for his relief, and recommend that the same be passed. This report is hereto annexed and made part hereof.

### *Testimony of the United States:*

Francis H. Smith, being a citizen of the State of Virginia, respectfully petitions the Congress of the United States for the removal of all disabilities imposed on him by the fourteenth amendment of the Constitution of the United States. Francis H. Smith, graduated at the United States Military Academy at West Point in 1833, and was commissioned second lieutenant in the United States Army the same year. On the 1st of May, 1836, he was honorably discharged from the service of the United States by the acceptance of his resignation. On the 1st of November, 1839, he entered into the service of his native State, Virginia, as a cadet at the Virginia Military Institute, which office he still holds. On the 1st of April, 1861, he was called into the field as an officer of the army and remained in service until the close of hostilities, when he took the oath of allegiance to the United States, and has faithfully discharged every duty to the United States which this oath demanded, and promises on honor to continue to be a citizen of the United States, meeting in good faith all the obligations imposed on him as a citizen under the Constitution and laws of the United States. He respectfully petitions the Congress of the United States for the removal of all the disabilities which he lies under the provisions of the fourteenth amendment of the Constitution of the United States, and for this he prays.

FRANCIS H. SMITH.

Witness my hand and seal, at Washington, D. C., February 2, 1880.



S. BANA, OF VIRGINIA.

MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KNOTT, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 5398.]

The Committee on the Judiciary, to whom was referred the petition of S. Bana, of Virginia, for relief from the political disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would respectfully report the accompanying bill for his relief, and recommend its passage. The petition is hereto annexed and made part hereof.

LORETTO, ESSEX COUNTY, VIRGINIA, March 25, 1878.

*To the Senate and House of Representatives, United States Congress, Washington, D. C.:*

The undersigned has the honor to address you requesting to be relieved from the disabilities imposed upon him by the amendments of the United States Constitution. He was a captain in the United States Navy before the war, and resigned his commission in April, 1861, after the secession of Virginia.

Very respectfully, your obedient servant,

S. BANA.



WILBURN B. HALL.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. KNOTT, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 4486.]

The Committee on the Judiciary, to whom was referred the petition of Wilburn B. Hall, of Georgia, for relief from the political disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would respectfully report the accompanying bill for his relief and recommend its passage.

The petition is hereto annexed and made part hereof.

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BALTIMORE, MD., 207 HOFFMAN STREET,  
February 7, 1880.

*To the honorable Senate and House of Representatives, United States Congress:*

The undersigned respectfully submits the following: He was a graduate of the United States Naval Academy. At the beginning of the late war between the States of this Union he resigned his position in the naval service, which resignation was duly accepted; he then took service under his own State (Georgia) and the Confederate States, being guided by his conscience and a sense of duty.

In consequence of the acts above mentioned he believes that he labors under certain political disabilities, and is not, therefore, accorded the same rights which other good and law-abiding citizens are entitled to enjoy. He, therefore, respectfully asks the Congress of the United States to remove any political disabilities which he may labor under, and to make him politically equal to all other good citizens.

And all this he submits with great respect.

WILBURN B. HALL.





WILLIAM B. ISAACS & CO.

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0.—Committed to the Committee of the Whole House and ordered to be printed.

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ARRIS, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany H. Res. 254.]

*tee on the Judiciary, to whom was referred the petition of Wil  
liam B. Isaacs & Co., of Richmond, Va., report:*

ppears from the papers referred with said petition that on  
ion of Richmond, on the 2d of April, 1865, the Bank of Vir-  
ue Farmers' Bank of Virginia withdrew from their said banks  
000 in gold and silver coin and bullion, principally, however,  
, and proceeded with said treasure, under the care of certain  
said banks, to Washington, in the State of Georgia; that  
day of May, 1865, the said officers of said banks, together  
treasure, set out with a wagon-train from Washington, Ga.,  
nd, having the proper permit and safe-conduct, for so doing,  
eneral M. B. Patrick, provost-marshal general; that some time  
night of the 24th of May, 1865, being encamped near the Sa-  
er, about 18 miles from Washington, Ga., they were attacked  
d cavalry force and their surrender demanded. They claimed  
on guaranteed them under the safe-conduct or pass of Gen-  
k, which was disregarded, and, under threat of death, they  
d to submit to being pillaged. These robbers succeeded in  
ay about \$250,000 in gold and silver coin and bullion of the  
00. The following day that portion of the treasure-train left  
eeded on its way to Richmond, and finally arrived there.

t day following the robbery, the bank-officers remaining be-  
ered about \$110,000 of the treasure of the \$250,000 of which  
een pillaged the previous night, and carried the same to  
n, Ga., and placed it on deposit with the cashier of the  
Washington, where it remained under the care and custody  
officers of said Richmond banks until the latter part of  
at which time, having procured a pass and safe conduct from  
eadman, in command of that district, with headquarters at  
ta., said officers proceeded with said \$110,000 from Wash-  
Augusta. That about the 1st of August, said bank officers  
Augusta with said \$110,000 and placed it on deposit in one  
usta banks, where it remained under the control and within  
ion of said officers of said Richmond banks until the latter  
gust, 1865, at which time General Steadman, in obedience to  
s from the authorities at Washington, D. C., requiring the

delivery of said \$110,000 to a United States Treasury agent, who had been sent to Augusta, Ga., took possession thereof and delivered it to said Treasury agent, who thereupon transported the same to Washington, D. C., and placed it in the United States Treasury. That soon thereafter the officers of said Richmond banks proceeded to Washington, D. C., and presented their petition in writing to the President of the United States and the Secretary of the Treasury, setting forth that said treasure was the private property of said banks, and that they were entitled to have the same returned to them. That after a full investigation of all the facts in connection with the matter, the President of the United States, the Secretary of the Treasury, and the Attorney-General decided that said treasure was the private property of the said banks, and that they were legally entitled to have the same turned over to them; and the necessary directions were given therefor. That, notwithstanding this decision, subsequently a joint resolution was introduced in the House of Representatives on the 22d of March, 1867, providing for the covering of said gold and silver coin and bullion into the Treasury of the United States, which said resolution passed the House on the day on which it was introduced, and passed the Senate the following day. This Congressional action was taken without any reference of the matter to a committee of either house of Congress, and without examination into the facts or merits of the case.

From that day to the present the owners of said treasure have been endeavoring to secure the return of said treasure to its legal owners.

That in June, 1871, under and by virtue of decrees made by the circuit court of the United States at Richmond, the assets of said banks were sold for the benefit of the creditors of said banks. That among the assets so sold was the claim of said banks for said \$110,000 of gold and silver coin and bullion. That at said sale said William B. Isaacs & Co. became the purchasers, for the benefit of themselves and others as creditors of said banks. That by virtue of said sale said William B. Isaacs & Co. have become the successors in interest of said banks in and to said treasure.

The question for determination is, was said treasure, at the time it was so taken possession of by the United States at Augusta, the private property of said banks? If it was, then your committee agree that the said banks or their legal representatives are justly entitled to receive from the United States the value thereof. In the judgment of your committee it is deemed the better course to refer the question of ownership of said treasure for determination to the Court of Claims.

Your committee have agreed to the accompanying bill, which provides for a reference of this case to the Court of Claims for its investigation.

Upon the case thus stated there would seem to be little or no doubt that the money so taken should be paid over to the petitioners, Messrs. Isaacs & Co. But there must have been evidently another side to this case, which your committee have no means of investigating.

The story of the petitioners, as above recited, is supported very fully by *ex-parte* affidavits and some documentary evidence, which, if they state all the facts, would compel the judgment of the committee. Yet your committee do not fail to see that there must have been some other side to this story to have required or induced the action of Congress: some representations must have been made to Congress that should have induced both branches to have taken the very prompt action which they did in this case, and the President of the United States to approve the bill covering this money into the Treasury of the United States.

That side of the case has not been presented to your commttee, and if it were we have no proper and adequate means of investigating it, or the truth of the very clear *prima-facie* case made by the petitioners. If the latter case should be fully sustained, upon thorough and impartial investigation, then it seems clear to your committee that the petitioners would be entitled to relief. This seems, therefore, to be one of that class of claims which should be investigated by a judicial court, with a view that the rights of both the United States and the petitioners should be ascertained and determined upon evidence taken under all the safeguards that the law requires in the investigation of rights by the courts.

Therefore your committee recommend the passage of the accompanying joint resolution.

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JAMES GREEN.

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MARCH 27, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. HARRIS, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 5399.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 5399) for the relief of James Green, have considered the same, and respectfully report:*

The claimant, James Green, was the owner and proprietor of the Mansion House Hotel in the city of Alexandria, Va., a very large and commodious building, and during the fall of the year 1861 the United States rented the property for hospital purposes at a rent of \$750 per month, as appears from the following correspondence and report:

SURGEON-GENERAL'S OFFICE, October 30, 1861.

SIR: In obedience to instructions from the Secretary of War, dated the 28th instant, I proceeded to Alexandria and, after a careful examination, have selected the Mansion House in that city, from its commodious and enlarged accommodations, its perfect ventilation and proximity to the railroad, as the best adapted site for a hospital for the wounded and sick soldiers.

It will accommodate about one thousand patients, is well supplied with gas and water, and does not require as many medical officers and appliances as smaller and more isolated buildings would render necessary.

I would recommend its immediate occupancy.

Very respectfully, your obedient servant,

C. A. FINLEY,  
*Surgeon-General.*

Hon. S. CAMERON,  
*Secretary of War.*

[Indorsement 1.]

Recommending the Mansion House at Alexandria for a hospital.

[Indorsement 2.]

Approved.

SIMON CAMERON,  
*Secretary of War.*

WAR DEPARTMENT, October 31, 1861.

[Indorsement 3.]

Respectfully referred to the Quartermaster-General, with a request that the building within named be obtained and turned over to this department for hospital purposes as soon as practicable.

C. A. FINLEY,  
*Surgeon-General.*

SURGEON-GENERAL'S OFFICE, November 1, 1861.

[Indorsement 4.]

Respectfully referred to Col. R. Ingalls, Assistant Quartermaster, U. S. A., who will take measures to rent the Mansion House at Alexandria and put it in proper condition for hospital purposes.

By order :

E. J. SIBLEY.

*Lieutenant-Colonel, U. S. A., Deputy Q. M. G.*

QUARTERMASTER-GENERAL'S OFFICE, November 5, 1861.

[Indorsement 5.]

OFFICE OF ASSISTANT QUARTERMASTER,  
*Arlington Depot, Va., November 8, 1861.*

Lieutenant Ferguson will take measures to procure and place this building at the disposal of the Medical Department at the earliest moment possible in the manner indicated.

RUFUS INGALLS,  
*Lieutenant-Colonel and A. D. C., A. Q. M.*

[Indorsement 6.]

OFFICE OF ASSISTANT QUARTERMASTER,  
*Alexandria, Va., November 24, 1861.*

Rented Mansion House and transferred it to Assistant Surgeon Sheldon, November 11, at a monthly rental of \$750.

C. B. FERGUSON.

*Second Lieutenant Nineteenth Infantry, A. A. Q. M., U. S. A.*

It further appears that the said property was regularly borne on the monthly reports of the Assistant Quartermaster at Alexandria to the Quartermaster-General's Department with the exception of the month of November, 1863, it being by mistake omitted in the return for that month. From these reports it appears that the property under the contract of renting was occupied by the United States from the 11th day of November, 1861, to the 30th day of June, 1865, at a rental of \$750 per month, and that there is due to the claimant under said contract the sum of \$32,750.

These facts all appear from the following communication and report from the Quartermaster-General:

QUARTERMASTER-GENERAL'S OFFICE,  
*Washington, May 27, 1876.*

Respectfully returned to Hon. J. R. Eden, Chairman of the Committee on War Claims, House of Representatives, Washington, D. C., through the honorable Secretary of War.

Capt. J. G. C. Lee takes up on his report for June, 1865. "Mansion House" used as a hospital at the rate of \$750 per month from the 11th of November, 1861, as owned by James Green, with pay due from December 1, 1863, to June 30, 1865, \$13,875.00. [\$14,250.00.]

The money accounts of Capts. C. B. Ferguson, William Stoddard, and J. G. C. Lee on file at the Treasury will show what payments, if any, have been made for the use of the premises.

M. C. MEIGS,  
*Quartermaster-General.*

WAR DEPARTMENT, QUARTERMASTER-GENERAL'S OFFICE,  
*Washington, D. C., June 5, 1877.*

*Case of James Green, for rent of "Mansion House" at Alexandria, Virginia, during the war.*

Capt. C. B. Ferguson, Acting Quartermaster-General, takes up the property on his October, 1863, returns, with pay due from November 11, 1861, to October 31, 1863, at \$750 per month—\$17,750. For the month of November, 1863, there seems to be a missing link. Captain Ferguson was there; but his report for that month covers only barges, schooners, &c.

s of the "Inspection Branch" indicate that Capts. Hawley, Stoddard, Perford, Brown, and Curtis, as also being on duty at Alexandria during their returns make no mention of the property.

C. Lee takes it up on his June, 1865 report, with pay due from December 30, 1865, at \$750 per month, \$13,575.00. [\$14,250.00.]

payment of the rent was suspended during the war, as it caused some suspicion as to the loyalty of the claimant; immediately after the close of the war having renewed his demand for the money due him, the claim was, after considerable deliberation by the then Secretary of War to the Third Auditor's suggestion that, unless there was a contract, the payment of the rent by the department was prohibited by the act of February, 1867. The Secretary of War directed all of the papers in the case to be sent to the Third Auditor, and the claimant understood that this order had been complied with.

The evidence of the contract of renting was not forwarded in obedience to the order, and the then Third Auditor, in the absence of this evidence, held that the act of February, 1867, applied to the claim, and that the claimant was not entitled to the payment.

In the other proceedings in the case not necessary to mention, in the month of January, 1878, the evidence of the contract of renting was found on the files of the Quartermaster-General's Department. It was presented to the accounting officers of the Treasury, when the claimant requested a rehearing of the case upon the ground of the after-discovery of the contract; and upon the question as to whether the rehearing should be granted, there was a difference of opinion, the Third Auditor deciding that the case should be reheard, while the Second Comptroller was of the opinion that, however meritorious the claim, the accounting officers of the Treasury had no jurisdiction of it, and that the claimant must apply to Congress for relief.

The claimant then applied to Congress for relief, not for the payment of the claim, but for leave to prosecute the claim before the Court of Claims.

The Second Comptroller, in answer to a communication from the committee on the subject, states that in his judgment the Court of Claims is the tribunal before which the claim should be prosecuted.

The report, then, briefly stated, is as follows:

The Government occupied the property under an express contract, and the claimant appears from the records of the government to be due the money. The claim, when referred to the Third Auditor by the Secretary of War, was not allowed for the want of the evidence of the contract, which was in the possession of the government, and which was not forwarded with the other papers to the Third Auditor, as directed by the Secretary of War; that when the said evidence of the contract was discovered and forwarded by the Quartermaster-General's Department to the Third Auditor, within which suit upon the contract could have been brought, the statute of limitations had expired, and the claimant had no redress to apply to the accounting officers for a rehearing, who differed from the Third Auditor in their jurisdiction of said officers to give the relief asked, and referred the claim to Congress for the relief to which he is entitled.

The committee are of the opinion that the claimant is entitled to have the claim paid in the Court of Claims, and therefore report the accompanying bill and recommend its passage.





## ENTIAL PERMITS TO PURCHASE PRODUCTS OF INSURRECTIONARY STATES.

ARCH 27, 1880.—Laid on the table and ordered to be printed.

, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 324.]

*tee on the Judiciary, to whom was referred bill H. R. 324, report  
as follows:*

before the committee (H. R. 324) is entitled "A bill to declare void the permits granted by the President of the United States for the sale of the products of the insurrectionary States." It provides that "before the Court of Claims, or any other tribunal, when it is sought to recover of the United States the net proceeds of the sale of the products of the insurrectionary districts, full force and effect shall be given to the permits, special licenses, and orders of free conduct and orders of sale under which said products were procured and brought within the United States, or were in transit or in store, and if it shall appear in the evidence that the parties holding such permits or orders, or those claiming under them, were authorized to go into any portion of the insurrectionary districts, and bring out the products of the same, and were guaranteed safe passage through the lines for this purpose, and that said products while in store awaiting transportation should be free from detention, seizure, or forfeiture, and that such products, notwithstanding said permits, licenses, or orders, have been seized and sold and the proceeds paid into the Treasury, when such action on the part of the government officials shall be shown to have been unlawful, and the claimant shall have judgment for the net proceeds of such sale so far as they can be ascertained, the Treasury of the United States, being the amount remaining after deducting expenses and the one-fourth belonging to the United States, under the contract with the Treasury Department.

uer provided that all such claims shall be filed for action be-  
urt of Claims within one year from the passage of the act,  
o other statute of limitations shall be applied to them. It is  
ed that the claimants shall not be concluded by any judg-  
ny court or ruling of any department, previously rendered,  
defeating the claim, on the ground that the transaction au-  
said Executive permits or orders were void because of the  
f any act of Congress, but that the parties against whom  
or judgment may have been made shall be allowed to pro-  
cases in the Court of Claims as if no such judgment had  
red, to be considered and determined upon the principles set  
e act.

Such, in brief, are the provisions of the bill. It purports to declare the *legal effect* of Presidential permits or special licenses. This would seem, under our system of government, to be a duty that devolved upon the courts of the country, and not upon Congress. But this bill not only seeks to invest the Congress of the United States with judicial functions in declaring the legal effect of the Executive acts mentioned, but provides that in future the courts, in passing on such acts, shall disregard their own former adjudications upon those very acts. It cannot be denied that such an application to Congress must strike every one as being rather extraordinary in its character.

But it is stated that the class of cases to which the bill refers, and for which it is intended to provide a remedy which the parties failed to successfully invoke through the courts, embraces individual instances of great hardship to meritorious citizens, who, during the war, dealt with the government in the utmost good faith, and who, at the close of the war, had their property siezed and sold, without any fault of theirs, and the proceeds paid into the Treasury of the United States. In other words, it is said that during the war President Lincoln, in the years 1864 and 1865, issued to various persons Executive permits or special licenses authorizing them to go into the insurrectionary States and bring therefrom the products of said States, principally cotton, the products thus brought out to be purchased by Treasury agents at three-fourths their market value in New York at the time of sale, the government retaining one-fourth of said value, and paying the other three-fourths to the owner; that in order to facilitate the object sought to be accomplished by the issuing of such special licenses or permits, an imperative order was endorsed thereon by the President, as commander-in-chief, granting safe conduct to the parties holding such permits, their means of transportation and their employés, within and without the lines of military occupation, and commanding all officers to respect said order and promote its objects: that citizens were invited by the United States, through the Secretary of the Treasury and agents appointed by him, to embark in such adventures; that after engaging in such business under the high authority of the President of the United States, and in good faith performing their part of the contract, their property, without any default or misconduct on their part, was seized by the government and the proceeds locked up in the Treasury; and when they sought through the courts to recover their own, the courts held that the President acted in violation of law and without authoity, and their title to the property was defective, and that, therefore, they had no right to recover any portion of its proceeds. Upon this assumed state of facts two positions have been taken and earnestly urged before the committee. First, it is contended that the President, by virtue of his office as commander-in-chief, had the right to issue such permits to whomsoever he saw fit, and that their validity or invalidity does not depend upon an act of Congress; and, secondly, it is urged that even if this position be not tenable the facts and circumstances surrounding these cases raise an equity in behalf of these claimants that Congress, with a due regard to their rights in the premises and the honor of the government, cannot decline to respect.

With regard to the first of these positions, a lengthy discussion of the question therein involved is deemed unnecessary in the view which the committee has felt itself impelled to take of the subject; but, if the question were material, the position could not be assented to.

A declaration or recognition of war causes an absolute interruption and interdiction of all commercial intercourse and dealings between the subjects or citizens of the two countries. The idea, says Kent, that any

commercial intercourse or pacific dealings can lawfully subsist between the people of the powers at war, except under the clear and express sanction of the government, and without a special license, is utterly inconsistent with the duties growing out of a state of war. This rule of commercial non-intercourse in a time of war is too universally recognized to need more than a mere reference to it. But this rule may be suspended or relaxed by the sovereign power of the State, so far as it may desire to forego or hold in abeyance its belligerent rights. It is not denied that in certain cases arising out of particular circumstances or emergencies of the war, at particular times and places, the President, as commander-in-chief, or even a military commander within his department or district, may suspend or relax the rule. But beyond this there are grave questions of a political and commercial nature arising out of a relaxation of the rule, which should be determined and settled by the law-making and the war-making power of the government. That the President, in virtue of his office as commander-in-chief, has the right to determine the *policy of the government* in reference to this non-intercourse rule cannot be admitted. The rule on this subject is thus stated by Halleck :

A general license is a suspension or relaxation of the exercise of the rights of war, generally or partially, in relation to any community or individuals liable to be affected by their operation. It must emanate from the sovereignty of the State, for the supreme authority alone is competent to decide what considerations of political or commercial expediency will justify a suspension or relaxation of its belligerent rights. That branch of the government to which, from the form of its constitution, the power of declaring or making war is entrusted has an undoubted right to regulate and modify, in its discretion, the hostilities which it sanctions. This may be done by a general ordinance, by instructions to armed vessels, or by licenses issued to certain communities or individuals exempting them from capture. In England, licenses are either granted directly by the Crown, or by some subordinate officer to whom the authority of the Crown has been delegated, either by special instructions or under the provisions of an act of Parliament. In the United States, as a general rule, licenses are issued under the authority of an act of Congress; but in special cases, and for purposes immediately connected with the prosecution of a war, they may be granted by the authority of the President, as commander-in-chief of the military and naval forces of the United States. (Halleck's International Law, pages 676-7, and authorities there cited.)

And again, as to *special licenses* :

For the same reasons a *special license* to individuals for a particular voyage, or for the importation or exportation of particular goods, must, as a general rule, also emanate from the supreme authority of the State. But there are exceptions to this rule growing out of the particular circumstances of the war in particular places. The governor of a province, the general of an army, or the admiral of a fleet may grant licenses to trade within the limits of their own commands, and such documents are binding upon them and upon all persons who are under their authority, but they afford no protection beyond the limits of the authority of those who issue them. Thus, in the war between the United States and the Republic of Mexico, the governor of California and the commander of the Pacific squadron issued such licenses, but it was not pretended that such protection extended beyond the limits of their respective commands. The peculiar circumstances of the case, the great distance from the seat of the supreme Federal authority, the scarcity of provisions and supplies, and the want of American vessels on that coast were deemed sufficient reasons for the exercise of that power. (*Id.* 677.)

A license is an act proceeding from the sovereign authority of the State, which alone is competent to decide on all the considerations of political and commercial expediency by which such an exception from the ordinary consequences of war must be controlled. Licenses being high acts of sovereignty are necessarily *stricti juris*, and must not be carried further than the intention of the authority which grants them may be supposed to extend. (Lawrence's Wheaton Int. Law, 690-1.)

But, as before stated, a discussion of this question is wholly unnecessary, as it does not arise out of any facts connected with the present application for relief. Nor is it necessary under the facts of this case to discuss the power of the President in such cases in the absence of Congressional legislation on the subject. The President of the United States

during the late war never undertook to grant licenses to trade independent of Congress, but on the contrary, so far as the committee are advised, every executive act of such character was performed under and with direct reference to the authority of an act of Congress and the regulations of the Secretary of the Treasury made in pursuance thereof. The idea that Mr. Lincoln supposed that he possessed the power, by virtue of being commander-in-chief, to suspend or relax the non-intercourse rule, nowhere appears from any license or permit issued by him which has been brought to the attention of this committee, nor has any court ever decided that any act of his in this regard was illegal or void for want of authority. The claim, therefore, of a strong equity in favor of the parties seeking relief is not based upon facts, and finds no confirmation in the history of the transactions out of which it is supposed to arise. To make this apparent, a review of the facts and of the history of those transactions will now be made:

Early in the war Congress took charge of this question of non-intercourse between the citizens of the two belligerent powers. The first act was passed on 13th July, 1861. By the fifth section of said act it was thus provided:

SEC. 5. *And be it further enacted*, That whenever the President, in pursuance of the provisions of the second section of the act entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to repeal the act now in force for that purpose," approved February twenty-eight, seventeen hundred and ninety-five, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then, and in such case, it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States: *Provided, however*, That the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. And the Secretary of the Treasury may appoint such officers, at places where officers of the customs are not now authorized by law, as may be needed to carry into effect such licenses, rules, and regulations; and officers of the customs and other officers shall receive for services under this section, and under said rules and regulations, such fees and compensation as are now allowed for similar service under other provisions of law.

It will thus be seen that all commercial intercourse by and between States declared in insurrection, and the citizens thereof, and the citizens of the rest of the United States, was declared unlawful, except such as should be licensed by the President, and conducted under the regulations of the Treasury Department. This act conferred upon the President a very large discretion in the matter of granting licenses to trade or in suspending the non-intercourse rule, providing, however, that all such intercourse so authorized by the President should be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. By the provisions of this act the Pres-

ident was authorized to grant to private individuals of any State in the Union a license to trade with citizens of States declared in insurrection. There was no limit on his discretion. But it is a noteworthy fact that even under this unlimited discretion, the President declined to grant permits to citizens of the Union to pass through the lines of the Federal Army and trade with citizens of States declared in insurrection. The trade permitted was confined to transactions between citizens of such portions of insurrectionary districts with each other as were within the lines of Federal occupation, or between such citizens and citizens of loyal States. In section 7 of Treasury regulations of March 31, 1863, it was provided that "No permit shall be granted to transport to or from, or to sell or purchase in, any place or section whatever not within the military lines of the United States."

And again, by the revised regulations issued on 12th September of the same year, it was ordered as follows:

Commercial intercourse with localities beyond the lines of military occupation by the United States forces is strictly prohibited, and no permit will be granted for the transportation of any property to any place under the control of insurgents against the United States.

Thus matters stood when the act of July 2, 1864, was passed. By the ninth section of this act the large discretion granted to the President in the fifth section of the act of July 13, 1861, was repealed. It is in these words—

SEC. 9. *And be it further enacted*, That so much of section five of the act of thirteenth of July, eighteen hundred and sixty-one, aforesaid, as authorizes the President, in his discretion, to license or permit commercial relations in any State or section the inhabitants of which are declared in a state of insurrection, is hereby repealed, except so far as may be necessary to authorize supplying the necessities of loyal persons residing in insurrectionary States within the lines of actual occupation by the military forces of the United States, as indicated by published order of the commanding general of the department or district so occupied; and, also, except so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor or the labor of freedmen or others employed and paid by them, pursuant to rules relating thereto which may be established under proper authority. And no goods, wares, or merchandise shall be taken into a State declared in insurrection, or transported therein, except to and from such places, and to such monthly amounts, as shall have been previously agreed upon in writing by the commanding general of the department in which such places are situated, and an officer designated by the Secretary of the Treasury for that purpose.

By section 8 of said act it was provided as follows:

SEC. 8. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the city of New York at the latest quotations known to the agent purchasing: *Provided*, That no part of the purchase-money for any products so purchased shall be paid or agreed to be paid out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under the provisions of this act. All property so purchased shall be forwarded for sale at such place or places as shall be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase-money and the other expenses connected therewith, shall be paid into the Treasury of the United States; and the accounts of all moneys so received and paid shall be rendered to, and audited by, the proper accounting officers of the Treasury.

This act of July 2, 1864, has received an authoritative construction and exposition by the Supreme Court of the United States. In the case of *United States v. Lane* (8 Wallace, 198), the court say in reference to the object and policy of the act:—

The law was designed to remedy existing evils. The mischiefs attending private trading with the enemy, even in those parts of the insurrectionary districts which

were for the time being within our military lines, had been seriously felt in the conduct of the war, and the best interests of the country required it should cease. It was deemed important, however, to still maintain some species of commercial intercourse with the insurgents, for it was well known that the government desired to have, if it did not interfere with military operations, the products of the South, particularly cotton, brought within our lines. To accomplish this end, and at the same time avoid the complications and embarrassments incidental to private trading, required the inauguration of a new system. This was done by withdrawing from the citizen the privilege of trading with the enemy and allowing the Secretary of the Treasury, with the approval of the President, to purchase, through agents, for the United States any products of the States declared in insurrection.

According to this exposition by the Supreme Court of the act in question, a new policy was adopted by Congress, which, instead of continuing the policy of allowing the President to issue permits to private citizens to trade with the enemy, placed the whole business in the hands of the government, to be conducted by agents appointed for that purpose, under regulations prescribed by the Secretary of the Treasury, with the approval of the President. Cotton was badly needed, and it was determined to obtain it, in so far as it could be done, without interfering with a rigorous and successful prosecution of the war. The Supreme Court declares, in the case above cited, that the object of the act was to induce citizens within insurrectionary districts, although not within the lines of the Union forces, to bring their cotton within said lines to be sold to a purchasing agent of the government appointed for that purpose. Commercial intercourse through and beyond the Federal lines was thus allowed, but only between citizens within the Confederate lines and said government agent. Such intercourse between private individuals of the loyal States and citizens of States declared in insurrection was prohibited. The court say that the reason of this was because the evils of private trading under the act of June 13, 1861, had been felt. The opinion is hazarded that the reason of the change of policy was probably because sufficient cotton was not obtained by private trading, which, as has been seen, was confined to places within the United States lines of military occupation. Perhaps all the cotton available under this process had been obtained, and it became necessary to cross the line of military occupation, or to permit citizens of insurrectionary districts to cross the lines with their cotton. Such intercourse could not, with safety, be left to private individuals, as military operations might be seriously affected thereby. Agencies for the purchase of insurrectionary products were established at Norfolk, Memphis, New Orleans, and, perhaps, other points. The Secretary of the Treasury proceeded to lay down the regulations by which this trade was to be governed. Rule 8 provided that "Whenever any person shall make application to the purchasing agent in writing, setting forth that he *owns* or *controls* products, stating the kind, quantity, and location thereof, or the date at which they will be delivered at some specified location accessible to transportation," the purchasing agent was directed to give a certificate of the fact that the party had made such application, and to request of the military authorities safe conduct for the party and his products to the place specified, or to the purchasing agent; and, to give further inducement to said parties to bring their cotton within the Federal lines, the President issued a proclamation by which such parties, when they had *sold* and *delivered* their products to such purchasing agent, and had in their possession his certificate of the fact, were allowed to purchase any articles not contraband of war or prohibited by the War Department to an amount not exceeding in value one-third of the aggregate price of the insurrectionary products sold to the purchasing agent; and such articles were allowed to be transported by the same

The case of *Maddox v. United States* (15 Wallace, 58) is referred to as showing that Presidential permits granted in 1864 were void. But the court in that case decided the case of *Maddox* to be void for the reason that he did not own the property proposed to sell, and held that his case was governed by the principle that governed *Lane's* contract, and that the *Maddox* case was void for a like reason. It is true, after he obtained the property of the purchasing agent that he had agreed to purchase certain goods of him, and had also obtained from said agent a request for the safe-conduct and transportation, *Maddox* presented the request of the President, who indorsed on it that the property to be transported should be free from seizure, &c. There was certainly nothing in this certificate of the purchasing agent, as prescribed by the regulations, which was presented to the President for his safe-conduct and transportation, which advised him of the fact that *Maddox* did not own the products he proposed to sell, or that he was buying them within the Confederate lines. On the presentation of this certificate of the Treasury agent the President merely

indorsed on it an order for safe-conduct, supposing, of course, for he had no reason to suppose otherwise, that Maddox was the owner of the products which he proposed to sell, and for which he requested the order for safe-conduct and transportation; and the order did not purport to be anything but authority from the President to Maddox to go into the insurrectionary States and purchase the products in violation of the act of 1864 and the Treasury regulations thereunder. It was simply a permit to transport products through the lines, which the President had every reason to think had been bargained for by the agent at Norfolk in conformity to the provisions of law. In this case of Maddox the Supreme Court reaffirm their decision in the Lane case.

Two cases have been presented to the committee as furnishing instances of extreme hardship to individuals which the bill seeks to remove: that of Andrews, of Pittsburgh, Pa., and of Walker, of Memphis, Tenn. Each of these parties had the order of the President for safe-conduct and transportation. In his memorial to Congress, Andrews gives the Presidential permit under which he claims to have acted. It is as follows:

EXECUTIVE MANSION, March 7, 1865.

Whereas James Andrews, of Pittsburgh, Pa., claims to *own or control* products of the insurrectionary States, and to have arrangements whereby he will be able to bring such products within the national military lines, and sell and deliver them to agents authorized to purchase for the United States, *under the act of Congress of July 2, 1864, and the regulations of the Treasury:*

It is ordered that all such products which an authorized agent of the government shall have agreed to purchase, and said Andrews shall have stipulated to deliver, as shown by certificate of the agent, *prescribed by Regulation VIII (Form No. 1, Regulations), attached hereto by such agent*, and being transported, or in store awaiting transportation, in fulfillment of said stipulations and in *pursuance of regulations of the Secretary of the Treasury*, shall be free from seizure, detention, or forfeiture to the United States, and officers of the Army and Navy and civil officers of the government will observe this order, and will give to said Andrews and his agents and means of transportation and said products free and unmolested passage through the lines, other than blockaded lines, and safe-conduct within the lines, while going for or returning with said products, or while the said products are in store awaiting transportation for the purposes aforesaid.

ABRAHAM LINCOLN.

Andrews goes on to say that under the authority thus conferred he proceeded in good faith and employed agents to proceed to execute the terms of the contract, but that President Lincoln's death occurring a few weeks thereafter, he, out of abundant caution, applied to Andrew Johnson for his ratification of the contract and obtained from him the following:

EXECUTIVE MANSION, May 18, 1865.

Whereas, James Andrews, of Pittsburgh, Pa., claims to *own or control cotton* in the insurrectionary States, and to have arrangements whereby he will be able to bring the same within the national military lines, and to sell and deliver it to agents authorized to purchase for the United States, *under the act of Congress approved July 2, 1864, and the regulations of the Secretary of the Treasury:*

It is ordered that all cotton the said James Andrews shall wish to deliver to such agents, and is being transported, or in store awaiting transportation for that purpose, in *pursuance of regulations of the Secretary of the Treasury*, shall be free from seizure, detention, or forfeiture to the United States. And officers of the Army and Navy and civil officers of the government will observe this order and give the said James Andrews, and his agents, and means of transportation, and said cotton free and unmolested passage through the lines, other than blockaded lines, and safe conduct within the lines, while the said James Andrews or his agents are going for or returning with said cotton, or while the said cotton is being transported, or in store awaiting transportation for the purposes aforesaid.

ANDREW JOHNSON.



This contract was thus indorsed by General Grant :

HEADQUARTERS ARMIES OF THE UNITED STATES,  
Washington, D. C., May 18, 1865.

No interference with the execution of the within contract will be caused by the military authorities of the United States, but, on the contrary, every facility will be given by them to carry out the contract in good faith.

U. S. GRANT,  
Lieutenant-General.

Now, it cannot be denied that Mr. Andrews had an order for safe conduct and transportation from both President Lincoln and President Johnson and also from General Grant. But safe conduct for what? For cotton which he represented himself as *owning* or *controlling* within the insurrectionary States. He was not authorized by either Presidents Lincoln or Johnson to go through its lines and buy cotton from parties within the Confederate lines, nor did either Lincoln, Johnson, or Grant ever give him an order of safe conduct or transportation for cotton so purchased. On the contrary, the permits of both Presidents which he exhibits is expressly based on his representation that he owned or controlled the cotton at the time, and that he should proceed under the provisions of the act of 1864, and the Treasury regulations made thereunder. The question arises, did Mr. Andrews *own* or *control* the cotton which he represented himself to Lincoln and Johnson as owning or controlling at the time he asked of them an order for safe conduct and transportation. According to his own statement in his memorial he did not; for, after reciting the permits of Lincoln and Johnson, based on his representations that he owned the cotton or controlled it, and on the provisional requirement that he should conform to the act of 1864 and the Treasury regulations made in pursuance of the same, his memorial proceeds to say :

The said Andrews, thus re-encouraged, *made his purchases of cotton*, and had matured all his arrangements, and was ready and prepared to transport the said cotton through the Federal lines into the loyal States.

It seems further from his memorial that after obtaining from Lincoln, Johnson, and Grant the documents above set forth, he went into the State of Arkansas, within the Confederate lines, and purchased the cotton (the proceeds of which he now seeks to recover), in plain violation of the act of Congress, of the Treasury regulations, and of his own representations, on which his permit of safe conduct and transportation was based.

The case of Walker has been before the Court of Claims, where it received an adverse decision on two grounds mainly: First, that he did not own the cotton at the time of obtaining the permit, but afterward purchased it in an insurrectionary State, and the contract was pronounced void on the authority of the cases of Lane and Maddox, before referred to; and, secondly, because Walker purchased the cotton from one O'Grady, who purchased the same from the agent of the produce loan of the Confederate States for Alabama and East Mississippi. The planters' bills of sale to the Confederate Government for this cotton were indorsed over and transferred by the agent of the produce loan to O'Grady, who indorsed and transferred them to Walker. The court held, on the authority of Sprott's case (20 Wallace, 459), that O'Grady acquired no title to the cotton by virtue of his purchase from the agent of the Confederacy, as he thereby furnished the Confederacy with the means of maintaining itself and carrying on the war against the government; and that as O'Grady purchased with full knowledge that the

cotton was owned by the Confederacy, and therefore acquired no valid title, Walker, who purchased with a knowledge of the defect in O'Grady's title, could acquire no higher or better title than his vendor had, the planters' bills of sale being notice to both O'Grady and Walker of the illegality of the transaction. (See 12 Court of Claims Rep., 408.)

The Presidential permit, on which Walker relied before the Court of Claims, is in the following words :

(Copy.)

Ex. C—J. O. C.

EXECUTIVE MANSION, *March 6th, 1865.*

Whereas Samuel P. Walker, of Memphis, Tenn., claims to own products of the insurrectionary States near Grenada and Canton, Miss., and Montgomery and Selma, Ala., and has arrangements with parties in the same vicinities for other products of the insurrectionary States, all which he proposes to sell and deliver to agents authorized to purchase for the United States the products of the insurrectionary States, under the act of Congress of July 2nd, 1864, and the regulations of the Secretary of the Treasury, it is ordered that all such products which a purchasing-agent of the government has agreed to purchase, and the said Walker has stipulated to deliver, as shown by the certificate of the purchasing-agent, authorized by Regulations VIII, Form No. 1, appended to regulations attached hereto by such agent, and being transported, or in store awaiting transportation, for fulfillment of stipulations, and in pursuance of the regulations of the Secretary of the Treasury, shall be free from seizure, detention, or forfeiture to the United States; and officers of the Army and Navy, and civil officers of the government, will observe this order, and will give the said Walker, his agents, and means of transportation, and said products, free and unmolested passage through the lines (other than blockade lines), and safe conduct within the lines while going for or returning with said products, or while said products are in store awaiting transportation for the purposes aforesaid.

(Signed)

ABRAHAM LINCOLN.

It will thus be seen, as in the case of Andrews, that Walker represented to the President that he *owned* or had the *control* of products of the insurrectionary States, which he proposed to sell to agents authorized to purchase for the United States the products of the insurrectionary States, under the act of Congress of July 2, 1864, and the regulations of the Secretary of the Treasury, and thereupon and *therefore* the President issued his order of safe conduct and transportation for said products. The President's order in this case, as in the case of Andrews, is expressly based on the representation of Walker that he owned or controlled the products at the time, and that he proposed to enter only into a transaction authorized by the act of Congress and the Treasury regulations. There is no authority whatever to permit Walker to go into an insurrectionary State and buy cotton, and the Court of Claims so held. Upon this point the court say :

There are no words or license to trade in the document. It is a mere pass or order, cautiously limited to matters connected with the products which were owned or controlled by Walker, and granting to him nothing but for himself and his products safe conduct, unmolested passage, and freedom from seizure, detention, and forfeiture. It was issued and is drawn up in language strictly with reference to the purchasing of products of insurrectionary States by the agents of the United States, and in aid of that object, and it conferred no authority or benefit which Walker did not have without it under the act of July 2, 1864, and the regulations of trade made by the Secretary of the Treasury, except as an order and passport from the commander-in-chief, granting to him free and unmolested passage through the lines and safe conduct within the lines while going for and returning with said products, and exemption from seizure of himself and his products. It does not purport to give Walker a general license to purchase products, and cannot be so construed, even if the President had the power to confer such a privilege upon him. And when the language is read in the light of the important fact that Congress had taken away from the President by statute the power previously conferred upon him of granting licenses to carry on commercial intercourse (and which the court might have added the President never

the extent of authorizing trading through the lines), it seems conclusive argument was not intended to and did not authorize commercial intercourse provided by the statutes, and that it only recognized Walker's right to sell to States agents the products which he owned or might control, and as protection and safe conduct for the same and for himself. (12 Court of 424-5.)

Walker did not own the cotton at the time of the Executive permit is placed beyond all doubt by the facts found in the Executive permit, as has been seen, is dated March 6, 1865. Walker's vendor, did not purchase the cotton from the Confederate agent until April 6, 1865, just one month after the date of the order from the President, and Walker purchased the cotton on 12th April, 1865. It may be proper to state also that it did not apply to the Treasury agent to sell this cotton until 1st May. The certificate of the agent that Walker had proposed to sell this cotton, and request for an order of safe conduct and transit is dated Mobile, Ala., June 1, 1865, after hostilities had ceased. General Dick Taylor, who commanded that department, had withdrawn with all his forces.

It is to be seen nothing in the case of either Andrews or Walker which would justify the committee in recommending the passage of a bill which would give upon Congress the power of declaring the legal effect of Executive permits, and giving to such permits a scope and meaning which the very terms in which they are couched shows could not have contemplated either by the President who issued them or the persons to whom they were issued, and compelling the courts hereafter to follow this Congressional adjudication, however erroneous they may be, and however directly it may come in conflict with their own sense of the permits of a precisely similar character. It may indeed be asked whether this is not an unwarranted invasion by Congress of the province of the judiciary. If a case should be presented where the President, under the belief that he had the power to do so, had issued a permit to a party to trade through the lines with the enemy, and the party supposed himself fully authorized to so trade, and had expended money in good faith under such misapprehension of both the President and himself, it would present a strong appeal to Congress. When such a case is presented it will be time enough to consider the question of granting relief and the best mode of doing it. We have been able to ascertain the facts of the two cases before us. In our attention we could not approve the bill under consideration giving to the permits in question a construction which they do not bear, and disregarding the settled policy of the government on the subject of commercial intercourse during the war, or rather of setting that policy in favor of individuals who had violated it. To give orders for safe conduct and transportation, issued by the President on the representation of the party that he owned the property, which safe conduct was requested, and also based on the condition that the party would conform to the act of Congress and the regulations, the effect of allowing such party to go through the lines and trade with the enemy, would be to substitute *new* Executive permits, and not to construe or declare the legal effect of such as were already issued. We therefore recommend the rejection of the bill.



**EFFICIENCY OF THE NATIONAL BOARD OF HEALTH.**

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**MARCH 29, 1880.**—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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**Mr. KING, from the Committee on Epidemic Diseases, submitted the following**

**R E P O R T :**

[To accompany bill H. R. 5520.]

**The Committee on Epidemic Diseases, to whom was referred the bill (H. R. 4085) to increase the efficiency of the National Board of Health, beg leave to report in lieu thereof the accompanying bill, the same being a copy of bill S. 1182, and which has been passed upon favorably by the Senate Committee on Epidemic Diseases, and ask that it be put upon the public Calendar.**





## INTERNATIONAL SANITARY CONFERENCE.

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9, 1880.—Referred to the House Calendar and ordered to be printed.

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OWAN, from the Committee on Epidemic Diseases, &c., submitted the following

### REPORT:

[To accompany H. Res. 195.]

*tee on Epidemic Diseases, to whom was referred the joint reso-  
I. Res. 195) authorizing the President to call an international  
conference, have had the same under consideration, and report  
as:*

mittee are of opinion that the object therein contemplated is  
at concern, not only to the public health of the country, but  
e investigations in our own and other countries.  
he most destructive epidemics with which this country has  
time to time visited are supposed to have been of foreign  
they have ordinarily made their appearance in other countries  
being developed here. Cholera is supposed to be a disease  
origin, and its ravages in eastern countries have almost inva-  
ded its appearance in our own. Yellow fever is supposed to  
e originating in tropical latitudes, and the theory is generally  
that it never originates spontaneously in any locality in the  
ates, but that it is always imported from some southern lati-  
order to ascertain something of the causes and origin of these  
ne means by which they find their way in this country, an  
al conference of sanitarians is an important *desideratum*.  
ernment already has a commission abroad investigating yel-  
and their labors would be greatly facilitated if participated  
nmission from the governments in which it is conducting its  
ons. The committee therefore respectfully recommend the  
the joint resolution.





APPROPRIATIONS FOR THE SUPPORT OF THE  
ARMY FOR THE FISCAL YEAR 1881.

1880.—Committed to the Committee of the Whole House on the state of  
the Union and ordered to be printed.

REPORT, from the Committee on Appropriations, submitted the  
following

REPORT:

[To accompany bill H. R. 5523.]

In presenting the bill making appropriations for the support of the  
Army for the fiscal year ending June 30, 1881, the Committee on Appropria-  
tions herewith make the following report explanatory of the same.  
The estimates upon which the bill is framed are to be found on page 75,  
the book of estimates, and amount to \$27,627,475.78. After  
a full and deliberate study and a full inquiry of the various officers of  
the War Department, who have all been before them, they have con-  
cluded that these estimates may be reduced in the aggregate \$1,201,675,  
the sum of \$26,425,800, which is recommended in this bill, and  
which is \$371,500 less than the amount appropriated by the law of simi-  
lar acts providing for the current fiscal year.

The bill contains nothing but the absolutely regular appropriations  
for the support of the Army, to wit:

War Department.....	\$12,299,800
Quartermaster's Department.....	10,755,000
Medical and Hospital Department.....	2,250,000
Finance Department.....	210,000
Engineer Department, contingent of the Army (\$40,000), and miscellaneous.....	770,000
	141,000
	<hr/>
	26,425,800



GERMAIN H. MASON.

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00.—Committed to the Committee of the Whole House and ordered to be printed.

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TS, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 2499.]

tee on the Judiciary, to whom was referred the bill (H. R. 2499).  
relief of Germain H. Mason, beg leave to report as follows:

son was United States circuit court commissioner, in the  
Michigan, from 1863 to 1872, inclusive. After August, 1872, he  
s account for fees to the United States during these years,  
duly audited and the amount of the fees for 1871 and 1872  
paid by the Treasury Department; but the fees for the cases  
ring the years 1863, 1867, 1868, 1869, and 1870 could not be  
e reason, as stated by the First Comptroller, that "all ap-  
s for expenses of courts prior to 1871 have been exhausted,  
counting officers have no means of making payments; and  
ly chance for you to obtain compensation for services ren-  
to 1871 will be by presenting a bill to Congress."

t that the services were rendered and the accounts approved  
sury Department and would have been paid but for want of  
ons. The amount claimed as unpaid, and for which the bill  
directs payment, is the sum of \$192.65. The department,  
as rejected some of the items, reducing the claim to \$169.65.  
Comptroller, under date of February 3, 1880, says, "If an act  
for the payment of the old account it should be for so much  
found due by the accounting officers, not to exceed the sum of

nittee therefore report an amendment to the bill in accord-  
ne suggestion of the Comptroller, and recommend the passage  
o amended.



**INNOCENT PURCHASERS OF PATENTS.**

**MARCH 31, 1880.**—Laid on the table and ordered to be printed.

**MR. LAPHAM**, from the Committee on the Judiciary, submitted the following

**R E P O R T:**

[To accompany bill H. R. 3049.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 3049) in relation to actions for the infringement of patents against bona-fide purchasers, having considered the same, respectfully report:*

That, in view of the fact that a bill of kindred character (H. R. 3767) has already passed the House, the committee deem it inexpedient at this time to recommend further legislation on the subject. They therefore report back said bill adversely, and ask that the same do lie upon the table.



JAMES REA.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CHARLES G. WILLIAMS, from the Committee on the Judiciary, submitted the following

R E P O R T :

[To accompany H. Res. 19.]

*The Committee on the Judiciary, to whom was referred the joint resolution (H. Res. 19) for the relief of James Rea, of Chicago, Ill., late United States consul at Belfast, Ireland, present the following report:*

Having carefully examined the report of the Committee on the Judiciary of the House of Representatives of the Forty-fifth Congress, submitted upon the same subject on the 18th of June, 1878, and having, also, examined all the papers submitted, and believing that said report fairly presents the case, this committee adopt the same, and herewith submit it as a correct statement of fact and conclusion:

The United States has brought suit against Mr. Rea and his sureties on his official bond, to recover an alleged balance of \$4,434, which suit is now pending under a temporary stay of proceedings by order of the Attorney-General to allow the memorialist to apply to Congress for such relief as may be just.

The committee, after a thorough examination of the papers submitted to them, are of the opinion that while Mr. Rea has no defense to the action now pending which a court of law would be authorized to receive and allow, yet there are items in his accounts of expenditures made by him in discharge of his official duties which should be allowed according to principles of justice and equity, which would greatly reduce, if not entirely discharge, the balance claimed against him.

Mr. Rea was appointed on the 16th of April, 1869, and took charge of the consulate on the 3d of the following August, and remained as such consul until the 7th day of August, 1873.

In the latter part of the year 1869, the German bark Oberberger-Meister von Winter, Capt. Carl Richard Schmidt, master, arrived at Belfast with a crew of eight American seamen, citizens of the United States. These seamen had been hired by Captain Schmidt in New York for the round voyage to Belfast and back. Upon arriving in Belfast Captain Schmidt repudiated his contract with them, forcibly put them off his ship, and turned them adrift in the streets without money or the chance of reshipment, there being a plethora of unemployed men in Belfast and no American vessel in port.

In this condition these seamen applied to the United States consul for assistance. The vessel being a German vessel, and the master German, the consul had no jurisdiction over them, but believing that the German consul would take jurisdiction and see that the seamen were protected in their rights, Mr. Rea laid the case before him. After frequent and persistent efforts to obtain redress for them from the German consul without success, Mr. Rea was advised and did bring the case before the Irish court of admiralty in Dublin, which court dismissed the suit on a demurrer to its jurisdiction on the part of the German consul, and referred it back to him for adjudication. The court of admiralty, when all the parties are foreigners, will entertain jurisdiction or dismiss the case in its discretion.

The expenses paid by Mr. Rea for the board, lodging, and the necessary disbursements of the admiralty proceedings amounted in the aggregate to £120 9s. 4d.

The laws of the United States do not provide for the payment by a consul of expenditures of this kind, however equitable and just they may be. Yet an American consul who failed to do all in his power to protect and redress American seamen, although shipped in a foreign vessel, when wrongfully discharged and left destitute in a foreign port, should receive the censure of the government.

This is one of the items of credit which is disallowed.

Mr. Rea's predecessor had received as compensation for his services, office-rent, and clerk-hire, \$3,700 or thereabouts. In 1869, certain fees that had been received prior to that time by consuls, and allowed for clerk-hire and incidentals not otherwise provided for, were prohibited, reducing the compensation and office-rent to \$2,200; a sum entirely inadequate for the service required at this port.

Upon this subject the committee have received the following letter and tabulated statement from the office of the Fifth Auditor of the Treasury:

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE,  
April 9, 1878.

GENTLEMEN: Referring to the memorial of James Rea, LL. D., late United States consul at Belfast, a copy of which has been submitted to me, I beg to state—

That my official position, being in charge of the auditing of the accounts of all our consuls abroad, made me fully aware of the duties and difficulties of his position.

That the duties involved were *entirely beyond the power of any one person to perform* without the assistance of one or more clerks.

That for such assistance he had to pay out of his own salary of \$2,000 a year, there being, during the time he was in office, no other provision for this purpose. Certain charges made by his predecessors in addition to the fees returned to the government, and used for payment of clerk-hire and other disbursements, were, about the time he entered upon his duties, prohibited by law. I know of no other case where the disparity was so great between the duties of the position and the compensation, all other consulates with the same business having a larger salary, and in most cases \$1,000 a year additional from consular agencies under them. This will more clearly appear by a reference to the accompanying tabulated statement.

That his case was the subject of several conversations between the undersigned and the late Secretary of State, Hon. Hamilton Fish; that the latter, upon ascertaining the amount of fees collected and remitted to the Treasury, expressed earnest sympathy with Dr. Rea, and did all in his power to have a measure passed by Congress for his relief; that the Senate, in successive sessions, passed bills which would have afforded him the relief he needed, but they failed to pass the House; that the undersigned wrote Dr. Rea letters from time to time in reference to the measures which were being taken for his relief, which he hoped would eventuate successfully, but they did not—at least not in time to be of any practical benefit to him (Dr. Rea), who was recalled in the summer of 1873. The session of the winter of 1873-74, however, passed the much-needed measure, increasing the salary of his successor by \$500 per annum, and appropriating \$1,500 for clerk-hire, which law is still in force.

Further, Dr. Rea was one of the most faithful, honest, and patriotic consuls in the service. His accounts were promptly and correctly rendered, and his remittances to the bankers in London were larger than those of his predecessors or successor in office.

I trust, therefore, I may be excused for expressing the hope that Congress will pass such a measure of relief as will, in justice and equity, reimburse the expenses which he incurred in the discharge of his official duties while in the service of his government.

I have the honor to be, your obedient servant,

GEORGE COWIE,  
Chief of the Consular Bureau.

To the honorable the JUDICIARY COMMITTEE,  
Of the House of Representatives.



the statement of fees, salary, and allowances received at the several consulates named, showing the great disproportion between the compensation and duties of as compared with any other consulate in the British Isles, during Dr. Rea's incumbency of it.

## BEFORE DR. REA'S INCUMBENCY.

Consulate.	Salary.	Office-rent.	Extra.	Total salary and allowance.	Fees accounted for to the United States.
1868.					
.....	\$2,000 00	\$200 00	*\$1,500 00	\$3,700 00	\$8,285 90
.....	2,000 00	200 00		2,200 00	282 58
.....	2,000 00	200 00	†1,000 00	3,200 00	1,167 75

## DURING DR. REA'S INCUMBENCY.

1871.					
.....	2,000 00	200 00	.....	2,200 00	11,995 38
.....	2,000 00	200 00	(;)	2,200 00	1,312 58
.....	2,000 00	200 00	1,000 00	3,200 00	2,279 75
.....	2,500 00	250 00	1,000 00	3,750 00	5,750 55
1872.					
.....	2,000 00	200 00	.....	2,200 00	12,175 71
.....	2,500 00	250 00	1,000 00	3,750 00	12,325 50
.....	2,000 00	200 00	.....	2,200 00	1,363 56
.....	2,000 00	200 00	1,000 00	3,200 00	2,510 48
.....	2,500 00	250 00	1,000 00	3,750 00	3,169 21
1873.					
.....	2,000 00	200 00	.....	2,200 00	10,713 73
.....	2,500 00	250 00	1,000 00	3,750 00	11,490 02
.....	2,000 00	200 00	.....	2,200 00	1,158 80
.....	2,000 00	200 00	1,000 00	3,200 00	1,162 49
.....	2,500 00	250 00	1,000 00	3,750 00	3,502 63

## UNDER DR. REA'S SUCCESSOR.

.....	2,500 00	\$500 00	1,500 00	4,500 00	8,993 95
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of a fee of 25 cents allowed to the consul upon each official transaction, over and above which was turned into the Treasury; repealed in 1869.  
not derived from agencies; this consulate also enjoys the 25-cent fee same as Belfast previously, 1869.

ing 20 per cent. on salary for office-rent went into effect July 1, 1873.  
ring \$1,500 a year for clerk-hire went into effect July 1, 1874.

the foregoing statement it will be seen that during Dr. Rea's incumbency of the consulate he transmitted to the Treasury about 25 per cent. more fees, and he did 25 per cent. more business, than either his predecessor or successor in the same office. His salary and allowances were \$1,500 per annum less than those of his successor, and \$2,300 less than his successor receives; in other words, his predecessor received 25 per cent. less work received \$1,500 per annum more pay, and his successor received 25 per cent. less work receives \$2,300 per annum more pay than Dr. Rea did. It also be seen that during the years of Dr. Rea's incumbency of the Belfast consulate his business was about equal to that of Birmingham, yet the latter received \$1,000 per annum in excess of the former; that Leith, with only half the duties of Belfast, received also \$1,550 per annum more than Belfast; that Leeds, with only one-eighth of the duties, received \$1,000 a year more than the latter; while Cork, with only one-eighth of the duties, received the same salary and allowances as Belfast. It also be seen that Dr. Rea's remittances of fees to the Treasury during his incumbency were over \$2,000 per annum greater than the amounts forwarded by either

his predecessor or successor in office, so that after reimbursing him all his expenses and outlay in the service of his government, there will still remain to his credit on the books of the department a large margin as compared with the returns of either his predecessor or successor in office.

Under these circumstances the committee recommend that the Secretary of State be authorized to settle and adjust with Mr. Rea his consular accounts, making such allowances as he may deem just and reasonable. And for this purpose they recommend the passage of the joint resolution.

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UNITED STATES CIRCUIT COURT IN IOWA.

MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. HERBERT, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 5526.]

*The Committee on the Judiciary, to whom was referred House bill 2713, beg leave to report as follows:*

That they have considered the same and recommend the passage of the substitute therefor herewith reported.

The principal and leading feature of the bill is that providing that circuit courts shall be held at each place in the State of Iowa where district courts are now held. At present, although there are four places in the State at which district courts are held, the circuit court of the United States is only held at Des Moines. This results in great inconvenience and costs to suitors residing in distant portions of the State. The docket of the circuit court at Des Moines is crowded with so much business that the judges have been unable to reach many of the cases. This accumulation of business is doubly distressing to suitors who reside at great distances from the place. If circuit courts are held nearer to the body of the people much will be saved in court costs and other expenses.

The bill also redistricts the State. The division reported in the substitute proposed by the committee is agreed upon by all the Representatives of the State in this House except three, one of whom, we understand, concurs in the division made if the bill is to be passed without providing a court at Davenport, which he insists should be done. The other two Representatives oppose the bill. The division seems to the committee to be fair and just.

The fourth section of the bill provides that the clerks of the district courts now held at the points where this bill proposes to establish circuit courts shall also be clerks of such circuit courts. As a matter of fact, the district judge will generally hold the terms of the circuit court proposed to be established by this bill. He will thus have under him, in courts presided over by him, clerks of his own appointment, which is in accordance with the theory of our jurisprudence.



ANN GREGORY.

MARCH 31, 1880.—Laid on the table and ordered to be printed.

Mr. HERBERT, from the Committee on the Judiciary, submitted the following

R E P O R T :

[To accompany bill H. R. 2645.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 2645) for the relief of Ann Gregory, beg leave to report as follows :*

The bill proposes to pay Ann Gregory \$1,500, with interest thereon at the rate of 6 per cent. per annum from April 11, 1864. It appears that on that day April 11, 1864, Charles, the husband of said Ann Gregory, purchased a lot of land in the city of Alexandria, Va., at a sale by John Underwood, marshal—the sale being by virtue of a judgment of condemnation rendered under the general confiscation act of July 17, 1862. The proceedings were against one William N. McVeigh.

The record of the case in which the judgment was had shows that the presiding judge ordered the plea filed for the defendant to be stricken from the file, and refused to allow his attorneys to make any defense, because the court held the plea showed the defendant was a rebel, and thereupon proceeded to render judgment of condemnation by default.

The sale by the marshal under this decree seems to have been regular, and by deed he conveyed to said Charles N. Gregory all such right, title, and interest of said McVeigh as “could be liable to confiscation, and was confiscated, under said decree.” For this right, so confiscated, Gregory paid \$1,500. Whether this money or any portion of it went into the Treasury of the United States does not clearly appear. Inasmuch, however, as the marshal (Underwood) made large payments into the Treasury of moneys, accounted for without being itemized as being the proceeds of confiscation cases, we are entitled to presume the money did go into the Treasury, less such portion of it as was deducted for fees and expenses.

Gregory was placed in possession of the property and enjoyed the rents and profits thereof from the date of his deed, April 11, 1864, without molestation, until the 26th day of February, 1874. This was a period of nearly ten years. On that day McVeigh began suit in the corporation court of Alexandria by ejectment, and on the 21st day of July, 1874, recovered a judgment for the land with \$1,532 damages for five years' and three months' rent for the occupation—the law in Virginia not permitting a plaintiff to recover for more than five years' use and occupation against one holding in good faith under color of title. Counting this five years and three months to begin from the 21st day of April, 1869, and assuming that the judgment placed a fair valuation on the rent, it appears that the purchaser and his widow enjoyed the rents from April

11, 1864, to April 21, 1869, a period of five years and ten days, for which no payment has ever been made or recovery had against them. If we estimate the value of the rent according to the estimate placed on it by the jury in 1874, and remember that this judgment was rendered after the financial panic of 1873, it clearly appears that the use and occupation of the land was worth, during these five years and ten days, fully \$1,500, the amount the petitioner's husband paid for it, and which she now claims, notwithstanding she enjoyed these rents, should be paid her with interest by the United States. It also appears from these facts that the lot was worth much more than Gregory bid for it. But it is further fairly inferable, from the papers furnished by petitioner, that neither she nor any one else has ever paid any portion of the \$1,532 assessed against her for occupation for the five years and three months preceding the judgment on July 21, 1874, unless it has been paid since the date of the affidavit hereinafter mentioned, as to which there is no proof.

H. I. Gregory, the brother of Charles N., makes affidavit, which is on file, dated January 24, 1879, that he and John A. Roman, to enable Ann Gregory to prosecute a writ of error to the Supreme Court of the United States, gave with her a bond of \$2,500, on which bond, since the failure of its condition by the affirmance in the Supreme Court of the judgment, suit has been begun against him in the District of Columbia. He swears that Roman and Ann Gregory are both insolvent. He does not swear that he is himself solvent, unless this can be inferred from the statement that he will have this bond to pay unless Congress passes this bill.

From all this it appears that the petitioner, Ann Gregory, has never paid anything for the use and occupation of this lot, and that this bill is either intended for the relief of H. I. Gregory or, if it be for her, that its purpose is to refund her \$1,500 and interest, when she has already enjoyed rents and profits amounting to more than \$3,000.

These considerations furnish a well-nigh conclusive answer to what might be called the equities of the case.

But there is a more conclusive reason why the bill should not pass. It would overturn one of the best settled doctrines of the law, viz, that whoever purchases at a judicial sale must look to the title. The court does not warrant, and the government cannot afford to warrant, that the proceedings of its courts are regular. If any such presumption could be indulged, then the guarantee of regularity and validity would apply, not only to the purchaser of property sold, but to the defendant in the suit as well. It is very certain that the government has no power or authority to convey the property of a defendant, except by a sale under a valid judgment. When Mrs. Gregory carried her case to the Supreme Court of the United States, that court decided the judgment of condemnation was null and void. (*Ann Gregory vs. McVeigh*, October term, 1874.) The court denounces the proceeding in strong language as having none of the elements of a judicial proceeding. If, then, this government is to be legally or equitably held responsible for the validity of the proceedings of its courts, it must pay McVeigh the rents for the five years elapsing from April 11, 1864, to April 21, 1869, because, without any authority whatever, it deprived him of his land and all rents during that period; and, if he does not succeed in recovering the rents from H. I. Gregory on the supersedeas bond, it ought to pay him these rents also, including lawyers' fees and expenses incurred in consequence of the illegal proceedings of its officers. A mere statement of such a proposition as this is enough to condemn it.

The only safe and sound principle upon which a government can act

in these cases is an application of the maxim approved for ages by the common law, "*Caveat emptor*." This maxim, applicable generally to judicial sales, is applied stringently to tax and confiscation sales.

Cooley, in his work on taxation, speaking of a purchaser at a tax sale, says :

He cannot shut his eyes to what has been recorded for the information of all concerned and, relying implicitly upon the action of the officers, assume that what they have done is legal because they have done it.

In this case the court which condemned McVeigh's property denied him a hearing. This the record showed, and Gregory was bound to know when he bought the property at an undervaluation that McVeigh would find a court that would give him a hearing.

If the rule "*Caveat emptor*" does not apply in a case of this character there is no room anywhere for its application.

The difference between a tax sale at which the property brings more than the assessment and such a case as this relates only to the overplus at the tax sale. Such overplus is the property of the owner of the land sold. As to the taxes and costs, that amount goes to the government and its officers absolutely. As to the overplus the government is trustee. In a confiscation sale all the proceeds go to the government; there is no overplus. The purchaser gets for it a title, good or bad as the case may be.

It would be a dangerous thing for the government to set such a precedent as we would make should we grant relief to the petitioner. There are numerous persons standing now, in exactly like case, waiting their turn if she succeeds.





THEODORE TEED.

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MARCH 31, 1880.—Laid on the table and ordered to be printed.

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HAMMOND, from the Committee on the Judiciary, submitted the following

REPORT:

*Committee on the Judiciary, to whom was referred the petition of Theodore Teed, accompanied by a bill to be entitled "An act for the relief of Theodore Teed," having had the same under consideration, beg to make the following report:*

In November, 1863, in the district court of the United States in Virginia lands in and near Alexandria, Va., were seized and libeled for treason under the "Act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," alleging that their owners, certain persons named in the bill, were rebels, &c.

On the 10th of March, 1864, a decree of condemnation was passed, and on the 11th of April, 1864, and bought by Theodore Teed and others, whose interests he soon after bought.

The bid for the land at the marshal's sale was \$1,140. The Supreme Court of the United States held the title void. In 1877, or later, Theodore Teed turned out of possession by the McVeighs by ejectment actions, and the title did not pass by said sale. Those facts, and no more, are set forth in the petition accompanying the bill. Upon them the petitioners ask that the United States pay him \$1,140, and interest at the rate of six per cent. per annum from the date of that sale. The petition to the Supreme Court reports casts further light upon the case.

When notice of this libel was published, the McVeighs, by counsel, answered. What was in that answer does not appear; but, in the case of Underwood, presiding, it was ordered stricken from the files, and from it it appeared that the McVeighs were "resident at Richmond in Confederate lines, and rebels"; and then he entered a default, because there was no answer filed. Upon appeal to the circuit court of the United States the judgment was affirmed. The McVeighs sought a writ of error from the Supreme Court. The General, Mr. Akerman, moved to dismiss their application, on the ground that they were rebels, &c. The Supreme Court said no; let them stand on their merits. They used this strong language, viz:

"The result would be a blot upon our jurisprudence and civilization. We cannot state or doubt on the subject. It would be contrary to first principles of justice and of the right administration of justice. (McVeigh vs. United States, Wallace R., 259, 267, December term, 1870.)"

Indeed, they had decided at December term, 1867, that defendants, in such cases, were entitled to jury trial. (*Union Insurance Company vs. United States, and Armstrong Foundry vs. United States*, 6 Wallace R., 759, 766, 770.)

When the McVeighs brought ejectment for these lands, Teed set up his marshal's deed as title. The court held the title void, because a hearing was denied to the McVeighs before such decree was made. That judgment was affirmed by the supreme court of Virginia. Teed brought that judgment to the Supreme Court of the United States for reversion, and it was by that court affirmed in October term, 1876. (96 U. S. R., 274 and 284.)

If Teed paid any mesne profits, it was only because he had had such profits out of the land. Indeed as, by statute of limitations, mesne profits are, in Virginia, recoverable for only five years, it is probable that for five or six years he enjoyed this property for naught. Whether the value of the same for that time would equal what he paid for the land does not appear.

This was a judicial sale. Such sales are always without warranty. The record on which the title was to stand was open to inspection. Teed is charged with notice of its contents. It was so flagrantly bad that a tyro in the law would have treated it as a nullity. We suppose the United States got the purchase money, but that Teed paid for the chance of a good bargain. Should the United States sell land for taxes, and the purchaser should get no title, he could not reclaim his bid.

The purchaser at judicial sales takes all risks of loss and all chances of gain, and can blame no one for his *laches* in not examining the record, &c. (See *The Monte Allegre*, 9 Wheaton R., 616.)

Your committee recommend that the bill do not pass.

**UNITED STATES COURTS AT FORT WAYNE, IND.**

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**MARCH 31, 1880.**—Referred to the House Calendar and ordered to be printed.

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**Mr. NEW,** from the Committee on the Judiciary, submitted the following

**R E P O R T :**

[To accompany bill H. R. 2384.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 2384) relating to United States courts at Fort Wayne, Ind., have considered the same, and submit the following report :*

The committee unanimously recommend the passage of the accompanying bill, with the following amendments :

In section 3, in lines 3, 4, and 6, strike out the counties Saint Joseph, La Porte, Lake, Newton, Jasper, Pulaski, and White.

At the end of the third section add the following, as section 4 :

**SEC. 4.** In all cases of removal of suits from courts of the State of Indiana, in the counties above named, to the courts of the United States in the State of Indiana, such removal shall be to the United States courts held at Fort Wayne, as aforesaid; and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of the United States courts, shall be deemed to refer to the terms of the United States courts held at said city of Fort Wayne.



L. S. ENSEL.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. NEW, from the Committee on the Judiciary, submitted the following

## REPORT:

[To accompany bill H. R. 5527.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 882) for the relief of L. S. Ensel, report as follows:*

It appears from the evidence that on the 1st day of November, 1876, Michael Heilbron and Bernard Weil were indicted by the United States grand jury in the northern district of Illinois, under the ninth clause or subdivision of section 5132, of chapter 8, of Revised Statutes.

On the 13th of December following, the defendants entered into recognizance in the sum of \$1,000, with said L. S. Ensel as their surety. A trial was had upon the indictment in the district court of said district by jury, commencing on the 7th of February, 1877, and resulted in a verdict of guilty on the 10th of the same month. Pending the deliberation of the jury, the defendants fled and their recognizance was forfeited.

Suit was thereafter brought in said court against said Ensel on the forfeited bail bond, and judgment rendered against him thereon on the 19th day of May, 1877, for \$1,000 and costs. Execution was issued on the judgment, and said Ensel paid to the United States marshal of said district, in satisfaction of said judgment and execution, the sum of \$1,075, exclusive of costs, which, on the 28th of June, 1878, was covered into the Treasury of the United States.

Since then the Supreme Court of the United States, in the case of the United States *vs.* Fox (5 Otto, 670), have decided that the ninth clause or subdivision of section 5132 is unconstitutional. Your committee therefore are of the opinion that said Ensel should have refunded to him out of the Treasury of the United States \$1,075, and recommend the passage of a substitute for said bill, reported herewith.

The following letters relating to the subject of this report are made a part thereof:

UNITED STATES ATTORNEY'S OFFICE,  
Chicago, January 16, 1878.

SIR: Respecting the subject of a letter received from Hon. William M. Springer (which letter is inclosed herewith), I beg to report as follows:

On the 1st day of November, 1876, Michael Heilbron and Bernard Weil were indicted by the United States grand jury for this district. The indictment contained eight counts, under the ninth clause of section 5132, Revised Statutes. On the 13th day of the following December they entered into a recognizance in \$1,000, with one L. S. Ensel, of Springfield, Ill., as their surety. Their trial in the district court here by a jury commenced on the 7th of February, 1877, and resulted in a verdict of guilty on the second, fifth, and eighth counts on the 10th of the same month. Pending the deliberations of the jury, and before the verdict, the defendants fled and their recognizance was forfeited.

On the 19th of March, 1877, the judgment against the surety (Ensel) for \$1,000 and costs was made final. On this judgment Ensel has paid \$1,054.22, and the same has been duly covered into the Treasury of the United States.

The Supreme Court of the United States, at the October term, 1877, in the case of the United States *vs.* Fox, held (as reported in 5 Otto) substantially that the language of the ninth clause did not create a criminal offense. Since that decision the courts here have, in their rulings upon similar cases, conformed to the principles established by that case.

Very respectfully,

MARK BANGS.  
*United States Attorney.*

Hon. CHARLES DEVENS,  
*Attorney-General, Washington, D. C.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE SOLICITOR OF THE TREASURY,  
*Washington, D. C., January 21, 1879.*

SIR: I have the honor to acknowledge the receipt of your letter of the 2d instant, inclosing a communication received by you from Hon. J. Proctor Knott, in relation to the case of the United States *vs.* L. S. Ensel, surety on a recognizance for the appearance of Heilbron and Weil, indicted at Chicago for violation of the internal-revenue laws.

In reply I have to say that this office has no information in its possession as to the indictment. The dockets show that on February 10, 1877, a suit was brought in the United States district court for the northern district of Illinois against L. S. Ensel, surety as aforesaid, to recover \$1,000, the penalty of the bail bond. On May 19, 1877, judgment was entered in this case for \$1,000 and costs (\$23.05). Execution was issued to the United States marshal for the southern district of Illinois, and on June 21, 1878, \$1,075 were deposited with the United States assistant treasurer at Chicago to the credit of the United States Treasurer, viz: Amount of judgment, \$1,000; interest, \$75; total, \$1,075.

The clerk of the court has no knowledge of the payment of any costs in this proceeding.

The inclosures of your letter are herewith returned.

Very respectfully,

K. RAYNER,  
*Solicitor of the Treasury.*

Hon. CHARLES DEVENS,  
*Attorney-General.*

WALKER A. NEWTON.

JUNE 4, 1890.—Laid on the table and ordered to be printed.

Mr. DIBRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3491.]

*The Committee on Military Affairs, to whom was referred the bill (H. R. 3491) for the relief of Walker A. Newton, having had the same under consideration, respectfully submit the following report:*

Walker A. Newton was appointed a second lieutenant in the Thirty-fourth United States Infantry 17th August, 1867, and served with his company and regiment at various places in Georgia, Mississippi, and Louisiana, until the consolidation of the Eleventh and Thirty-fourth Regiments to form the Sixteenth Regiment, when he was left out, and placed upon waiting orders by General Orders, No. 4, Headquarters Sixteenth Infantry, April 12, 1869. By General Orders, Adjutant-General's Office, No. 59, July 14, 1869, he was transferred to the Thirteenth Regiment Infantry, and ordered to join his regiment, which order was revoked by Special Orders 202, August 20, 1869, Adjutant-General's Office, and he was directed to report in person to the commanding general Department of Louisiana.

His arrest and trial upon a charge of selling two sets of pay accounts was ordered by letter from the Adjutant-General's Office, August 23, 1869, addressed to the commanding general, Department of Louisiana. It does not appear anywhere that said Walker was ever arrested or tried for said charge. But in his affidavit on file he admits that two pay accounts were out for the month of June, 1869, and attempts an explanation therefor, which your committee think needs confirmation by proof. He further admits that he afterwards took up or paid one of said pay accounts.

On the 2d September, 1869, he reported from Holly Springs, Mississippi, that having received no order he should immediately start for Washington, but there is no record evidence that he did come to Washington, and the next order found is the order General Order 95, War Department, Adjutant-General's Office, Washington, July 25, 1870, which says:

Under the provisions of section 17 of the act approved July 15, 1870, the following named officers are by direction of the President hereby dropped from the rolls of the Army for desertion.

\* \* \* \* \*  
Second Lieutenant Walker A. Newton, unassigned, absence since August 20, 1869.  
By order of the Secretary of War.

E. D. TOWNSEND,  
Adjutant-General.

Section 17 of the act referred to fully authorizes the President to drop any officer who had been absent from duty for three months without leave.

Lieut. Walker A. Newton was ordered, 23d August, 1869, to report to the commanding general of Louisiana, and failed to do so, or to show by proof that he did so; upon the contrary, he reports from Holly Springs, Mississippi, 2d September, 1869, that he should start for Washington, but he does not show that he ever applied for orders, nor does he prove that he ever rendered any service thereafter. And your committee are of opinion and so report, that between the orders of August, 1869, and the orders of July, 1870, eleven months, he had ample time and opportunity to report his whereabouts. The bill asks his reinstatement in the Army with pay from August, 1869. Your committee think this would be a great injustice to the officers in the Army who have been always on duty, and cannot consent to favor such a proposition. The fact of his long absence, coupled with the charge of selling or disposing of the two accounts, we think justified the President in dropping him from the rolls, and your committee report the bill adversely and recommend that the same do not pass.



**JUDICIAL DISTRICTS IN TEXAS.**

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**MARCH 31, 1860.**—Referred to the House Calendar and ordered to be printed.

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**Mr. CULBERSON**, from the Committee on the Judiciary, submitted the following

**R E P O R T :**

[To accompany bill H. R. 5197.]

*The Committee on the Judiciary, to whom was referred bill H. R. 5197, make the following report :*

The committee recommend the passage of the bill, because it appears the residents of Delta County will be accommodated by the change proposed, and the public service will in no wise be inconvenienced.

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STATE NATIONAL BANK OF BOSTON, MASS.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. ROBINSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 3305.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 3305) for the relief of the State National Bank of Boston, Mass., submit the following report:*

The State National Bank of Boston is a banking corporation, duly established and organized prior to February 28, A. D. 1867, under the laws of the United States, and having its place of business in the city of Boston, in the State of Massachusetts.

On the day named, to wit, February 28, 1867, and prior thereto, one Julius F. Hartwell was the cashier of the sub treasury of the United States located in Boston, and had access to, and more or less control of, the moneys belonging to the United States. Prior to the day named Hartwell embezzled a large amount of money belonging to the United States, by lending the same to Mellen, Ward & Co., a firm of brokers and bankers in Boston. As the time for an examination of the condition of the sub-treasury drew near, Hartwell saw that his guilt would be detected unless he could provide, in some way, a sum of money equal to the amount fraudulently appropriated by him. Accordingly, he and Mellen, Ward & Co. concocted a scheme which seemed to them to promise concealment of the guilt and relief from the threatening embarrassment.

Mellen, Ward & Co. arranged with the Merchants' National Bank of Boston and the Second National Bank of Boston for a purchase from them of gold certificates of the United States; that is to say, from the Merchants' National Bank, to the amount of \$480,000, and from the Second National Bank, to the amount of \$100,000; in all, a total of \$580,000. Then, one Carter, a member of the firm of Mellen, Ward & Co., went to C. H. Smith, the cashier of the State National Bank, and represented to him that his firm, Mellen, Ward & Co., had been employed by the assistant treasurer of the United States to exchange gold certificates for gold coin, and told him that these certificates would be at the Merchants' National Bank in a few days, from whence they were to be carried to the sub-treasury. Carter further asked Smith to certify the check of Mellen, Ward & Co., drawn on the State National Bank in payment for the gold certificates, as good, upon receiving the gold certificates and the certificate of deposit in the sub-treasury as security for the payment of

the checks. Carter further said that his firm had arranged to pay the checks at the Merchants' National Bank.

As Mellen, Ward & Co. were in good standing and credit, and had been generally known as engaged in large transactions in gold, gold certificates, bonds, and stocks, Smith relied upon the representations of Carter, and certified the checks of Mellen, Ward & Co. to the amount of \$580,000, in payment of \$480,000 of certificates to the Merchants' National Bank, and of \$100,000 of certificates to the Second National Bank, and the certificates so obtained were taken by Carter and Smith together to the sub-treasury on February 28, 1867, and there deposited.

Hartwell received the certificates from Smith in the presence of Carter, and made out two receipts to Mellen, Ward & Co., or order, for the same, of which receipts the following are copies :

UNITED STATES TREASURY, BOSTON.

Deposited by Mellen, Ward & Co., of Boston, on acc't of deposit of gold c't'fs, amount four hundred & twenty thousand dollars; the same to be exchanged for gold c't'fs, or its equivalent, upon their order or demand.

Date Feb. 28, 1867.

J. F. HARTWELL, Cr.

UNITED STATES TREASURY, BOSTON.

Deposited by Mellen, Ward & Co., of Boston, on acc't of gold certificates deposited, amount one hundred & sixty thousand dollars, to be exchanged for gold c't'fs, or its equivalent, on demand.

Boston, Feb. 28, 1867.

J. F. HARTWELL, Cr.

Carter then indorsed each of the receipts as follows :

Pay only to the order of C. H. Smith, cashier.

MELLEN, WARD & CO.

And Smith thereupon took them away to the State National Bank.

Subsequently the receipts were presented at the sub-treasury by the State National Bank, and payment of them refused, Hartwell's embezzlement and his complicity with Mellen, Ward & Co. having been meanwhile discovered. The certificates were all canceled and sent to the Treasury at Washington.

Thereupon important legal questions arose, and suits were brought by the banks holding the certified checks against the State National Bank to enforce payment. The whole question of the reality of the sales of the gold certificates and the consideration therefor was put in issue.

The case of the Merchants' National Bank against the State National Bank in the circuit court of the United States was tried twice before Mr. Justice Clifford, who, after the plaintiff's case was put in, ruled that the action could not be maintained. This ruling was reversed by the Supreme Court, and, under the law established by the full court, the State Bank paid the Merchants' Bank \$480,000 in gold. (See 10 Wall, 604.)

In the mean time an action was commenced in New York by Pitt Cooke against the State National Bank, involving the right to payment of the remaining \$100,000, claimed to have become due originally to the Second National Bank. This case was tried, taken to the general term, then to the court of appeals, and judgment entered finally against the State Bank February 10, 1873. (See 52 N. Y. Reports, 96.)

Payment of this judgment followed. The decisions in the two cases settled the validity of the title of the State National Bank to the whole amount of the gold certificates, viz, \$580,000.

Pending the suit in New York for \$100,000, the State Bank filed its

petition against the United States in the Court of Claims to recover the \$480,000. The Court of Claims awarded judgment thereon for the petitioner for the full amount claimed, and the United States took the case to the Supreme Court. A decision by the Supreme Court, affirming the decision of the Court of Claims, was rendered in 1877. (See 6 Otto, 30.)

The United States paid the amount of the judgment, to wit, \$480,000, without interest.

The opinion of the Supreme Court last referred to gives a clear and concise statement of the facts, and disposes entirely of every question of law that can arise in the matter now under consideration. *The residue of the gold, the \$100,000 now sought, was not involved in the controversy.* (See opinion.)

The following quotation from the case in 6 Otto is made:

The finding of the court shows clearly that Hartwell knew when he received the certificates that they did not belong to Mellen, Ward & Co., and that they did belong to the State Bank, represented by Smith as its agent. Hartwell was privy to the entire fraud from the beginning to the end, and was a participant in its consummation. It is not denied that Smith acted in entire good faith; what he did was honestly done, and it was according to the settled and usual course of business. *Hartwell was the agent of the United States.* He was appointed by them and acted for them. He did, so far as Smith knew, only what it was his duty to do, and what he did constantly for others, and it is not denied that it was according to the law of the land. Smith no more suspected fraud, and had no more reason to suspect it, than any other of the countless parties who dealt with the sub-treasury in like manner. There could hardly be a stronger equity than that in favor of the plaintiff. \* \* \* But surely it ought to require neither argument nor authority to support the proposition, that where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money or property cannot be held by the United States against the claim of the wronged and injured party. The agent was agent for no such purpose. His doings were vitiated by the underlying dishonesty, and could confer no rights upon his principal.

After payment of the \$480,000 was made by the United States, the remaining \$100,000 was demanded in January, 1879, of the United States, and payment refused. On January 22, 1879, a petition against the United States was filed in the Court of Claims by the State Bank to recover this balance. The United States filed a general denial and pleaded the statute of limitations, and upon those issues the cause stands.

Your committee suggest that if the right of action accrued at the time of the original deposit, to wit, February 28, 1867, the statute would seem to be well pleaded, but if it did not accrue until the rights of the parties were determined by decisions in the several suits hereinbefore referred to, or if, as the court intimates in 6 Otto, the United States were trustees for the true owners of the certificates, in which latter case a right of action might not accrue until a demand and refusal, the statute is not well pleaded. But under the language of the act creating the Court of Claims and a construction recently given (see 99 U. S., 493), the statute might be held to bar the claim.

In view of the fact that the State Bank was constantly engaged for more than ten years in litigation required to determine the facts and to settle the difficult and novel questions of law involved, your committee are of the opinion that the case should be allowed a hearing before the Court of Claims upon its merits. And as all of the facts in the case in 6 Otto are requisite and essential to a proper determination of the merits of the present claim, such portions of the records and findings of fact in said case as are relevant and pertinent may properly be used in evidence in the hearing authorized under the proposed bill.

The committee recommend the passage of the bill.



CYRUS C. CLARK.

MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ROBINSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 2497.]

*The Committee on the Judiciary, to whom were referred bill H. R. 2497 and bill H. R. 4428, for the relief of Cyrus C. Clark, late additional paymaster in the Army of the United States, submit the following report:*

The history of the case appears in full in the findings of the Court of Claims, and in the opinions of the Supreme Court. (See Court of Claims Reports, vol. 11, p. 698; *ibid.*, vol. 12, pp. 61, 705. See 94 U. S. Reports, p. 73; see 96 U. S. Reports, p. 37.)

Relief is sought from liability to the United States for the sum of \$15,979.87, public funds, lost by said paymaster, without fault or neglect on his part.

The same presentation of facts as is now given was made by the House Committee on the Judiciary, of the Forty-fifth Congress, and a favorable report made to the House, but the bill was not reached for action.

On the 6th of April, 1865, Cyrus C. Clark was an additional paymaster in the Army of the United States, and on that day, while in the line of his duty at Franklin, Tex., lost by robbery of his safe, a package of government funds.

The robbery was committed in the day-time by forcibly breaking into Clark's quarters during his temporary absence, and then forcibly breaking into the government safe in which the funds were.

On the same day the matter of this loss was brought before a court of inquiry which exonerated Clark from blame for the loss.

On the 21st of the same month he made a formal report of the loss to the Paymaster-General.

Later, in his first account current after the loss, he entered to his own credit the following item:

Amount lost by robbery of safe at Franklin, Tex..... \$15,979 87

This item remained unrevised until November 6, 1871, when it was disallowed by the accounting officers of the Treasury, and thus this sum entered into a balance against Clark.

On February 17, 1873, with the purpose of recovering this claimed balance a suit was commenced in the circuit court for Connecticut against Clark and his sureties, which suit is still pending.

On April 12, of the same year (1873), Clark petitioned the Court of





## TITLE TO LANDS IN CALIFORNIA.

1830.—Committed to the Committee of the Whole House and ordered to be printed.

PERSON, from the Committee on the Judiciary, submitted the following

### REPORT:

[To accompany bill H. R. 5529.]

*Committee on the Judiciary, to whom was referred the bill (H. R. 3179) to the equitable and legal rights of parties in possession of certain lands and improvements thereon, in California, and to provide jurisdiction to determine those rights, submit the following report:*

On the Bay of San Francisco, and about two miles west of the city, there stands a bold, rocky promontory, called indifferently Point San José, or Black Point.

General H. W. Halleck, general-in-chief of the Army of the United States, in consequence of reports that the Alabama was expected on the Pacific Coast, sent a dispatch to the commanding general at San Francisco, of which the following is a copy:

WASHINGTON, D. C., October 2, 1863.

The Secretary of War directs that you take military possession of Point San José, and the battery proposed for its defense; the question of ownership will be determined hereafter.

H. W. HALLECK, General-in-Chief.

Gen. G. WRIGHT.

Obedience to this order General Wright took possession, October 1863, of the extreme portion of Point San José, dispossessed the Indians and occupants thereof, and constructed the projected fortification. Some of the houses and other structures then on the Point were pulled down, and others put to use for officers' quarters and for other purposes.

In 1864 and 1865 the commanding general of that military department of the United States extended the military possession over the adjacent land, and took in all within 800 yards of the northern extremity of Point.

On the 1st of July 1, 1870, Congress released all claim of the United States to all of the tract within 800 yards as aforesaid, excepting and reserving therefrom about 50 acres, which was deemed sufficient for all the purposes of the government, and the portion so excepted and saved is now owned and occupied by the United States military forces, and all the lands that were taken into possession by General Wright under the order quoted above.

John Steinbach, Mrs. Jessie Benton-Frémont, George Eggleston, and others, asserted a legal title to the premises in question, and claimed compensation for the destruction and loss of their

property. Some of the claimants applied to the Secretary of War for an order of restoration of their property, and others sought relief in the courts. In all such cases, whether before the War Department or in the courts, the United States denied the claimants' right to the premises, and alleged that the ownership was solely in the national government, and its possession, therefore, entirely just and lawful.

The precise question of title was put in issue in the case of *Emil Grisar vs. Irvin McDowell*, this being a suit to recover a portion of the lands taken and held under the said order of General Halleck, and the judgment rendered therein for the defendant was affirmed by the unanimous opinion of the Supreme Court of the United States at the December term, 1867 (see 6 Wallace, p. 363). This decision incontestably established and confirmed the full legal title of the United States to the land and premises claimed by Grisar and others, as stated hereinbefore, and since that adjudication no further question is made by any person that the portion of Point San José now occupied for military defenses as aforesaid, is a part of the public property of the nation.

But the claimants now appeal to Congress for compensation for the land and improvements, basing their demands upon equity. The present bill is drawn with a view to allow them a hearing before the Court of Claims, in which they may recover the compensation to which they insist they are fairly entitled.

Your committee are fully convinced, upon inquiry (and for valuable information in point they refer to House Ex. Doc. No. 11, Forty-fifth Congress, third session), that Point San José is of the very greatest importance in a system of defenses for the harbor of San Francisco, and that its relinquishment cannot be made without serious injury to the interests of the United States, and they are therefore brought to consider whether Congress is bound, in equity and fair dealing, to provide an opportunity for the claimants to recover a money equivalent for the lands and improvements taken.

For the satisfactory determination of this question, the committee have made a very careful and thorough examination of official documents, decisions of courts, the testimony of the claimants, and all other available instruments and sources of evidence, and have sought to give just and full consideration and weight to all facts, suggestions, and inferences, as well for the individuals as for the government.

The subject has received the attention of both branches of several Congresses, and committees have reported thereon, some favorably, others adversely; but no bill giving the relief now sought for has ever passed either branch of Congress. In view, therefore, of the importance of the subject and of the different conclusions heretofore reached, the committee deem it their duty to place all the facts on record for the inspection and judgment of the House.

The facts and arguments for the claimants, in their most favorable light, may be stated thus:

First. Before the United States occupied California, there was, under Mexican law, a pueblo, or municipal body, upon the peninsula now occupied by the city of San Francisco. That pueblo held certain rights, privileges, and immunities, among which was the right to hold four square leagues of land in and around the pueblo, in trust and for the benefit of the inhabitants of the pueblo. (See *Hart vs. Burnett*, 15 Cal., 530.)

Second. California was admitted as a State in the Union in 1850. San Francisco, upon incorporation as a city, succeeded to all the rights of the old pueblo, including the right to four square leagues of land.

In 1853 Leonidas Haskell and George Eggleston went upon Point San José, found no one in visible possession, entered possession of it for themselves, and built a fence around a large tract which tract included the land now under consideration.

Said Haskell and Eggleston, and those claiming to hold title to them, continued in open, undisturbed, and peaceable occupation of the land down to October 10, 1863, the date of the execution of General Seward's order above quoted. In that period they made valuable improvements thereon, built dwelling-houses, stables, and other buildings, planted trees, shrubbery, and flowers, paid taxes on said property to the city, and the property was freely bought, sold, and mortgaged.

About a mile distant from, but in sight of, Point San José, was a fortification called the Presidio, which was at that time fenced in by a wall and guarded by sentinels; but during the time stated the city occupied the Point, nor was any flag hoisted there.

The city of San Francisco, in 1855, by the passage of the "Ordinance of 1855," so called (which will be quoted from hereafter), entitled "An act for the settling and quieting of the land titles in the city of San Francisco," released and quitclaimed to the parties in actual possession of the land *in the city's right* to all the lands within the city limits, with certain exceptions not now material. And the legislature of California, in 1858, confirmed and ratified said ordinance. (See Dwinelle's *History of San Francisco*, p. 216.) The present claimants, or those under whom they now assert title, were in actual possession of the lands in question at the time and within the intent of said ordinance.

The act of Congress, under the act of March 3, 1851 (see 9 Stat., p. 631), "An act to ascertain and settle the private land-claims in the State of California," created a board of land commissioners, and provided that any claim to any town lot, farm lot, or pasture lot held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, shall be presented by the authorities of the said town, or where the land on which the claim is made is a town, or village was originally granted to an individual the claim shall be presented in the name of such individual, and the fact of the existence of the said city, town, or village on July 7, 1846, being proved shall be *prima-facie* evidence of a grant to such corporation or individual under whom the said lot-holders claim.

Accordingly, the city of San Francisco, representing under the claims of the several lot-holders, on July 2, 1852, appeared before the commissioners and, as successor to the ancient pueblo, presented its claim for four square leagues of land. The United States commissioners recognized the title of the city, but did not then before the commissioners make any claim of reservation or of any right to make reservations out of the said land. The city made complete proof of the existence of the pueblo or town of San Francisco prior to July 7, 1846.

In 1854 the commissioners confirmed the claim of the city to the four square leagues and rejected it for the balance. *The city confirmed embraced the Presidio and Point San José.* Both parties were satisfied—the city because it had failed to recover the whole; the United States because any part of the claim was allowed, and both parties appealed to the United States district court.

The appeal of the United States was withdrawn in 1857 upon the motion of Attorney-General Cushing and dismissed in the court. Thereafter the suit proceeded under the appeal of the city, the district

attorney of the United States representing the interests of the United States, and a final decree, the terms of which will be given hereafter, was entered May 18, 1865.

Eleventh. The appeal of the United States having been withdrawn in 1857, and the Van Ness ordinance having been ratified by the legislature of California in 1858, the question of titles, as affected thereby, came before the supreme court of California in *Norton vs. Hyatt* (8 Cal., 539), in which case the court declared that the United States had no title to the land within the limits confirmed. Again, in *Hart vs. Burnett* (15 Cal., 530), decided in 1860, the same State court declared the release effected by the Van Ness ordinance and the State legislation thereon made a perfect title. Other decisions by the same court affirmed that conclusion. *But when these decisions were made the appeal in the "pueblo case" was pending and all the issues therein open.*

Twelfth. The claimants rely upon the acts of Congress, of the city council, of the State legislature, the decisions of the State court, the open and undisturbed occupation of the land from 1853 to 1863, the sales, taxation, and improvement of the property. They assert that they had no knowledge or suspicion whatever that the United States made or had any claim to Point San José, and that searchers of titles, employed to advise as to the safety of purchases or investments, had declared that neither the records of the county nor of the land-office of the United States in San Francisco contained any evidence of any right or claim of the United States to any of the said lands; and, further, they say they were misled by the action of the United States in withdrawing the appeal and by the fact, as they assert it to be, that not until seven years after the appeal was dismissed, to wit, October 31, 1864, was any knowledge of a reservation of Point San José made public or put in evidence in said case. But these assertions made by the claimants are not supported by the incontrovertible facts of the case, as will abundantly appear hereafter.

As has been heretofore said, the claimants have never had any legal title to the land, nor do they now, since the decision in *Grisar vs. McDowell*, assert it. They rely wholly upon the equities of the case and appeal for recognition of the justice of their claim. But your committee have found a long train of facts and circumstances, gathered out of the history of the time and locality, which in many important points totally disprove the declarations of the claimants, and from which reasonable inferences as to the knowledge and conduct of the parties are to be drawn, and these are presented in behalf of the United States as follows:

First. The pueblo which was established upon the peninsula of San Francisco at the time of the conquest, July 7, 1846, had certain defined rights in four square leagues of land. The rights of the pueblo to the land were wholly subordinate, however, to the control of the supreme government.

All grants of land lying within ten leagues of the coast, whether made for towns or for any other purpose, must be approved by the supreme executive power of Mexico in order to make them valid; moreover, they are all subject to the reservation that the general government has reserved to itself the right to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, and other public edifices which it might deem expedient for the defense or security of the nation. (See compilation of laws made by General Halleck. Ex. Doc. No. 17, first session Thirty-first Congress.)

If the land within the four leagues belonged to the pueblo it was still subject to the control and disposal of the sovereign if it was not bound by private contracts or conditions of dedication or endowment. (See Dwinelle's History, p. 68.)

Conceding the pueblo right, and that is unquestionably settled, still it remains beyond dispute that until the lands of the pueblo were lawfully assigned or granted to private holders the supreme government had absolute authority to devote any of the same to public uses, fortifications, arsenals, warehouses, &c. Out of many references which could be made confirming this position, the committee quote from *Hart vs. Burnett*, above cited, as follows:

The towns had such a right, title, and interest in these lands as to enable them to use and dispose of them in the manner authorized by law, or by special orders, and consonant with the object of the endowment and trust. Undoubtedly, the right of control remained in the sovereign, who might authorize or forbid any municipal or other officer to grant or dispose of such lands, even for the purposes of the endowment or trust. Such general right with respect to a public corporation exists in any sovereign state, and must, of course, have existed in the absolute monarchy of Spain, where the property of private individuals was to a great degree subject to the royal will and pleasure.

Again, from the same case last cited:

We have seen that the title of this property, before the treaty, was in the pueblo, and that the city succeeded to the same title, clothed substantially with the same trusts or similar trusts. But these trusts and this property are under the political domain and control of the sovereign. The property and trusts and corporation were municipal, and therefore subject, as political institutions, trusts, and property, to the superior political authority.

Mr. Justice Field, in *Grisar vs. McDowell*, says (after speaking of the limits of pueblos):

All lands within the limits stated which had previously become private property, *or were required for public purposes*, were reserved and excepted from the assignment. Until the lands were thus definitely assigned and measured off the right or claim of the pueblo was an imperfect one. It was a right which the government might refuse to recognize, or might recognize in a qualified form; it might be burdened with conditions, and it might be restricted to less limits than the four square leagues, which was the usual quantity assigned. *Even after the assignment the interest acquired by the pueblo was far from being an indefeasible estate, such as is known to our laws.*

Second. No assignment of lands was ever made to the pueblo of San Francisco. The inhabitants of that pueblo held merely occupation of the lands on the peninsula under the limitations of the trust. No grant or assignment to Haskell or Eggleston from any former occupant is asserted. San Francisco succeeded to the pueblo rights, but only to them limited, as they were under Mexican laws. It does not seem credible that Haskell or Eggleston could have believed that they, by their entry and occupation in 1853, without any grant, obtained any title in fee or right to alienate the lands.

Third. Prior to the occupation by Haskell and Eggleston the lands at Point San José had been the subject of conflicting claims, and for their possession the strife between the squatters and the military forces had been determined and constant. General Halleck (who went to California in 1846, served as lieutenant of United States Engineers, and secretary of state in California from 1847 to 1849, and was a member of the board of engineers on fortifications in 1853 and 1854), in a communication to Col. R. B. Mason, governor of California, under date of March 1, 1849, says in reference to the lands required for fortifications:

It is only necessary to remark here that Fort San Joaquin (begun in 1776), the Presidio (begun in 1776), and Yerba Buena battery on Yerba Buena Point (built in 1797,) *as well as the intervening lands*, have been occupied by the military forces of Spain and Mexico for nearly three-quarters of a century, and are now in possession of the troops of the United States. (See Ex. Doc. No. 17, first session Thirty-first Congress, p. 131.)

The "intervening lands" included Point San José.

Again, in 1866, General Halleck, after an examination of Mrs. Fré-

mont's claim, makes the following statement in his report to the Secretary of War:

The defense of the bay of San Francisco occupied the attention of the Spanish and Mexican governments at a very early period, and Fort Point (then called Point San Joaquin), Point San José, the islands, and Point Cavallo were designated by them as the most proper places for fortifications.

When the Russians made a settlement at Bodega, thus threatening the Spanish-Mexican establishments at San Francisco and Sonoma, the governor of California was directed to concentrate his military forces on this bay, and to fortify Point San Joaquin and Point San José, as the most advantageous positions for the defense of the harbor. These facts have been derived from the old Spanish archives.

About the month of February, 1847, General Kearney, by direction of Mr. Marey, then Secretary of War, appointed a board of engineer officers to make a reconnaissance of this harbor and to select the points to be permanently fortified for its defense. The undersigned was a member of that board, which, before reporting, consulted freely with the late Admiral Du Pont, Commodore Mervine, Commodore Montgomery, and other naval officers then serving on this coast. All were unanimously of the opinion that Point San José was indispensable to a proper system of harbor defenses. It is, perhaps, worth mentioning that this board selected, although then ignorant of the fact, precisely the same points as had been previously designated by the Spanish and Mexican authorities for the same purpose. Indeed, the natural features of the land are such as to afford scarcely any opportunity for a difference of opinion. In the spring or summer of 1847, the late Capt. W. H. Warner marked off and surveyed a military reserve including Point San José, the Presidio, and Fort Point, which was held and occupied by the United States troops during the war.

After the declaration of peace and the cession of California to the United States, land claimants and squatters complained that the military reserve laid off by Captain Warner included more land than was necessary for military purposes, or had been occupied by the Spanish and Mexican authorities, and the small garrison at the Presidio either could not, or neglected to, prevent their encroachments upon this reserve. Under these circumstances, the undersigned, in the early part of 1850, was directed by General Riley to examine the ground with the joint board of six military and naval officers appointed by the President for the coast of Oregon and California. That board was unanimously of the opinion that Point San José should be fortified as a part of the harbor defenses. It assented, however, to the reduction of the reserve marked out by Captain Warner, and designated the two reserves nearly as described in the modified reservation made by President Fillmore on the 31st of December, 1851. (See Senate Ex. Doc., No. 26, second session Forty-third Congress.)

March 31, 1850, the joint commission of navy and engineer officers wrote to the Secretaries of War and Navy, recommending the reservation of certain lands for public purposes, including Point San José.

April 5, 1850, one Dexter R. Wright, claiming to own a large tract of land, including Point San José, executed a bond in the sum of \$50,000 to convey to the United States Point San José and the other lands, his object being, as he said, to stop litigation and to secure a settlement of boundaries by a compromise. Wright claimed title under a pretended grant, dated June 25, 1846, from Pio Pico, Mexican governor before the conquest of California by the United States. But Secretary of War Crawford, June 19, 1850, rejected the proposed transfer on the ground that Wright's claim was wholly fraudulent, and ordered General Riley to continue to hold the lands in military possession. Subsequently, the courts declared Wright's title worthless, and the litigation which extended for several years after 1850, and involved the ownership of the very land now in question, could hardly have been carried on without attracting general attention. (See Ex. Doc. No. 17, first session Thirty-first Congress, pp. 174-179.)

The following communication from Capt. E. D. Keyes, in command at the Presidio, has important bearing:

PRESIDIO OF SAN FRANCISCO, *January 19, 1850.*

SIR: I have the honor to report that as I was riding toward town this morning I discovered a party surveying a portion of the public reserve on this side of the lagoon at the foot of the hill. I pulled up the marking flags of the party and ordered them to proceed no farther. I also sent a party of men under an officer to enforce my orders



was stopped and all traces of it obliterated. Two men had pitched their tents in the bushes, and, as it was raining when I discovered them, I ordered them to move on as the weather cleared. They neglected to do so, and to-day I was obliged to have their tents pulled down. In no other case have I been obliged to use force. I have just learned that there are a couple of tents near the shore, between Point San José and Point San José. I shall have them removed on Monday, and then the reserve will be complete. I think I have removed not less than twenty tents, and the disposition of the public grounds increases daily.

I am, sir, your most obedient servant,

E. D. KEYES,

*Captain Third Artillery, Commanding Post.*

S. CANBY,  
*Adjutant-General.*

Letter to Secretary of War Preston, dated July 31, 1850, Captain Keyes states that he, on February 28, 1850, ejected a squatter by force from public lands, and was sued in an action of trespass, damages at \$10,000. From that letter we quote as follows:

"The squatter, who is an Englishman by birth, immediately put up the tents and had caused to be torn down, and now lays claim to the whole of Rincon Point. It has been understood. Many persons, no doubt, are interested with him; and many of the town persons of wealth and influence have seized on portions of the land, and I must go into court under the disadvantage of large and varied claims against me.

"In my letter, and several others of a later date, Captain Keyes requests that he be authorized to employ counsel to defend himself against this and like suits which had become very numerous and annoying. Not all these trespasses were on or even near Point San José, but some plainly were, and these events could not have happened without exciting thoroughly the attention and remarks of the public.

McDowell, in 1866, in reporting upon the claim of Mrs. Frémons at Point San José, said:

"My headquarters show that the place of San José was reserved by the military authorities in 1847, while it yet formed a part of Mexico; that it was reserved by the President in 1850 and 1851, and that those who seized it were told that it was land reserved for public purposes. The single officer of the army alone had to represent the general government with a small squad of men, and he was in vain to protect the public interests. He personally threw down the huts of the squatters, and pulled up their stakes, but the government at that time if it then had long arms, had very feeble ones; and, before the war, not only individuals defied it. Combinations of land-grabbers and land-lawyers harassed this officer that he wrote in despair that he could not protect the property, and in one of his letters reports: 'They have seized on Point San José and have it in complete possession.'

On November 30, 1848, the President constituted a joint commission, referred to, for an examination of the Pacific coast to select a site for a defense. March 31, 1850, the commission recommended the purchase of a tract which embraced the Presidio and Point San José. On June 6, 1850, the President ordered certain reservations in the State of California. One of these reservations embraced Point San José, and the description used in the order is essentially that used in the recommendation of the commission. The following is a copy of the order so far as it is material to the present case:

"The President of the United States exempts and reserves from sale, for public purposes, the following tracts or parcels of land in the State of California:

"A tract of 800 yards south of Point San José to the southern boundary of the State, and its southern boundary to its western extremity; and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos.

MILLARD FILLMORE.

San Francisco, November 6, 1850.

It should be borne in mind that the reservation thus made was a part of territory that was occupied from an early period by the Spanish and Mexican forces, and from 1847 to 1850 had been in constant occupation of the United States military forces.

June 24, 1851, Commissioner Butterfield, of the General Land Office, sent to Samuel D. King, surveyor-general of California, a copy of President Fillmore's order, and the same was filed in his office. (See *Grisar vs. McDowell*.)

The United States engineers found difficulty in defining the reservation. For this reason, and further because it was believed that the reservation was larger than was necessary for public purposes, and private parties desired to possess a portion of the land, a modified order was issued, of which the material part is as follows:

The reservation including Fort Point, Point San José, and the Presidio, at the entrance to the harbor of San Francisco, Cal., made by an order dated November 6, 1850, is hereby modified and reduced so as to embrace only the following-described two tracts of land, viz:

1. The promontory of Point San José within boundaries not less than eight hundred yards from its northern extremity. \* \* \*

MILLARD FILLMORE.

EXECUTIVE MANSION,  
Washington, December 31, 1851.

This second order clearly embraces Point San José and all the lands for which the claimants seek payment, and this is not now questioned.

But it has been repeatedly asserted on behalf of the claimants, in hearings before several committees of the Senate and the House, *that this second order was kept a secret, and that no notice of it reached San Francisco till June, 1864.* Indeed, in some of the reports of the former committees it will be found that this statement has been accepted and declared as a fact.

The following copies of official communications will, it is believed, be satisfactory refutation of these statements:

GENERAL LAND OFFICE,  
May 7, 1853.

SIR: Herewith you will receive a copy of a letter to this office, from General Jos. T. Totten, of the engineer department, in relation to reserve No. 1 at the Presidio near San Francisco, Cal., with a traced copy of the plat transmitted by him therewith.

Please to acknowledge receipt hereof.

I remain, very respectfully, your obedient servant,

JOHN WILSON,  
Commissioner.

SAMUEL D. KING, Esq.,  
Acting Surveyor-General, San Francisco, Cal.

[General Totten's letter alluded to.]

ENGINEER DEPARTMENT,  
Washington, April 25, 1853.

SIR: In reply to your letter of the 19th instant, referring to reserve No. 1 at the Presidio near San Francisco, Cal., I have to inform you that it appears from the records of the War Department that the President, on the 31st of December, 1851, modified his order dated November 6, 1850, in relation to reservation of lands at the entrance of the harbor of San Francisco, Cal., including Fort Point, Point José, and the Presidio, so as to embrace only the following described two tracts of land, viz:

"1. The promontory of Point José, within boundaries not less than 800 yards from its northern extremity.

"2. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the ocean."



very respectfully, your most obedient,

**Brevet Brigadier-General, United States Engineers.**

ILSON, Esq.,  
Commissioner of the General Land Office.

enclose herewith a traced copy of the plat, witnessed by Lieut. H. W. Halleck, Corps of Engineers, exhibiting the desired reservation as modified by the order of December 31, 1851, and as to which Lieutenant Halleck, who is in San Francisco, will afford the surveyor-general any additional information he may desire.

**SURVEYOR-GENERAL'S OFFICE,**  
*San Francisco, Cal., June 21, 1853.*

the last mail I had the honor to receive your letter of the 7th ultimo, cover-  
of a letter to you from the engineer department, dated 25th April, with a  
rein referred as showing the tracts on the south side of the entrance to the  
San Francisco, directed to be reserved by the President's order of the 31st  
1851, modifying his order of the 6th November, 1850.

And the commanding general of this division of the receipt of these papers, his office will have the tracts surveyed whenever he may desire it, and shall deem it expedient, designated some officer to accompany the deputy ex-  
work.

g that it is desirable that the areas of these reservations should be ascer-  
 ections will be given to meander the water front of each tract.  
 great respect, sir, your obedient servant,

**Surveyor General.**

WILSON,  
Commissioner of the General Land Office.

correspondence shows conclusively that a full description of the  
 ions was filed in the surveyor-general's office in San Francisco  
 1853, *before any improvements of value were made on the land in*

Every one interested had access to those files, and the plat was witnessed by General Halleck, then and for many years in San Francisco. Later, in 1864, another copy of the Prescond order was sent to the surveyor-general; but the earlier is sufficient to put Haskell, Eggleston, and all others who relied possession upon inquiry.

The President's reservations were made by order, not by process nor pursuant to an act of Congress. And it has been said in report.

main ground on which the claimants rest their claim against the United States is that the reservation was not made for the purposes for which it was made, and that is that the reservation for the purposes could not be made secretly by the President, and lay ten years without the owners of the land, and without being published either by proclamation in the records of the land office for the proper district of California.

supreme court has held the orders valid and sufficient. Besides, orders by order have been recognized in legislation. (See 4 Stat., and 10 Stat., p. 159.)

Further, your committee have presented abundant proof that due as given, that copies were filed seasonably in the land office in cisco, and they deny that the claimants were or ever had been of the lands."

Haskell and Eggleston, as appears by affidavits on file, were in  
 cisco from 1850 down to 1865. General Frémont, husband of  
 e claimants, was for a longer period closely identified with the  
 of California as a public official and as a private citizen, being  
 governor and at all times in close intimacy with the military

and civil officers of the United States in California. During these fifteen years the title to almost every inch of soil in San Francisco was in litigation; suits to settle land disputes were innumerable; unscrupulous land-grabbers were openly defying the government in its determination to hold its reservations; fraudulent titles, one upon another, under pretended Mexican grants, were asserted all over the city, and the land commission before alluded to passed over upon six hundred cases. Your committee are forced to the conclusion that Haskell, Eggleston, and General Frémont shared in the common knowledge of the time, and could not have been so innocent and unsuspecting as the claimants represent them.

Seventh. Strong reliance is placed by the claimants upon the city's release as effected by the Van Ness ordinance of 1855, as ratified by the legislature. They maintain that they, having possession of the land, became thereby vested with all the city's title. That may be true; but the city, at best, took only the pueblo right. The act of Congress of March 3, 1851, establishing the land commission, granted nothing to the city; only created a tribunal to settle disputed land claims, whether made by municipalities or individuals. The pueblo right was in trust for the use of the inhabitants, subject to the paramount authority of the supreme government. The United States, by conquest and treaty, became the supreme power and succeeded to all the public rights. And these distinctions and rights were most plainly recognized by the city and the State. (See Van Ness ordinance.)

SEC. 1. It shall be the duty of the mayor *to enter at the proper land office of the United States, at the minimum price, all the lands above the natural high-water mark of the Bay of San Francisco, &c.*

SEC. 2. The city of San Francisco hereby relinquishes and grants all the right and claim of the city to the lands within the corporate limits, to the parties in the actual possession thereof, by themselves or tenants, on or before January 1, 1855, excepting. &c.

SEC. 9. Although the city hereby renounces in favor of the actual possessors, in accordance with the provisions of section 2, any right or claim of its own, nothing in this ordinance is intended to prejudice any outstanding title to the said lands adverse to the said possessors.

SEC. 10. Application shall be made to the legislature to confirm and ratify this ordinance, *and to Congress to relinquish all the right and title of the United States to the said lands* for the uses and purposes hereinbefore specified.

It will be observed that the first section made it the duty of the mayor to enter all the lands in the city as if they were public lands; the admission from this provision is conclusive that the city, in fact, regarded the public land title as strong as the pueblo title.

John W. Dwinelle, attorney for the city in the pueblo case, says of the ordinance:

It was prepared with a double aspect, so as to quiet the title of all the lands embraced within its scope, whether they should ultimately be held to be pueblo lands or public lands of the United States. If pueblo lands, then the holders of titles from that source were protected; if public lands, then those holding titles from that source were equally protected. (Dwinelle's History, p. 365.)

And this language was used by Mr. Dwinelle after the case was ended, upon a full review of the important controversy with all the features of which he had become entirely familiar.

Eighth. The hearings before the land commissioners, under the act of 1851, began in 1852, and the city's pueblo claim was then presented. In 1854 the commissioners rendered a decision in the pueblo case, confirming the city's claim to a part of the four leagues, and that part embraced Point San José. Much stress is laid by present claimants on

this decision. *But the part confirmed embraced as well the entire Presidio reservation, containing 1,541 acres*; and there is no question that the Presidio reservation had been held under military control for nearly a century, and was at that time actually in the open occupation of the United States troops and surrounded by a fence. If it be urged, as it is, that the United States, by the subsequent withdrawal of the appeal, voluntarily disclaimed title to Point San José, surely the disclaimer covered the Presidio as well; but no one is bold enough to support that conclusion. When the appeal of the United States was dismissed, the case proceeded on the city's appeal, and the whole issue remained open for evidence from either party. (See *Grisar vs. McDowell*.)

Under the Van Ness ordinance the mayor had entered the lands as public lands of the United States, and therefore the city prosecuted its suit upon two distinct and opposing theories, namely, to hold the lands for the possessors under the pueblo claim; or, that failing, to maintain the right of the possessors thereof as that of settlers upon the public domain.

The United States disputed utterly the pueblo claim, declaring the lands to be public under conquest and treaty. If it was public land, the power to make and maintain reservations was unquestioned; if, however, the pueblo claim prevailed, the United States, as the supreme power, could take so much as was necessary for public purposes.

It would seem, upon a careful examination of all the evidence, that the city council, the legislature, the courts, the people of San Francisco, and Congress all concurred in this view, and it must be that the present claimants and their predecessors held their possession with full knowledge of the uncertainty of the title.

July 1, 1864, Congress, *while the pueblo case was pending on appeal*, passed an act ceding to the city of San Francisco all the right, title, and interest of the United States in the lands embraced within the corporate limits of said city for the uses and purposes specified in the Van Ness ordinance, "there being excepted from this relinquishment and grant all sites or other parcels of land which have been or now are occupied by the United States for military, naval, or other public uses." (13 Stat., p. 332.)

It is worthy of comment in this case that the present claimants, in a memorial filed in this Congress, in quoting the above act omit the words "have been, or"—confining the exception to those lands *which were in 1864 occupied by the United States*, and your committee have failed to find in any brief or argument in behalf of the claimants the full exception set forth as in said act. As only the very extremity of Point San José was occupied in 1864 by the United States, and as General McDowell did not take possession of the whole reservation, being all the land within a radius of 800 yards of the point, till June, 1865, the omission is significant.

The act of July 1, 1864, passed Congress without debate in either branch, and it must be assumed that its provisions, though excepting so much from what the city was claiming, were acceptable to the Senators and Representatives of California in Congress.

Ninth. October 31, 1864, by stipulation between the United States district attorney and the city's attorney, proof of the President's order of reservations was put into the case, and a decree filed confirming to the city four leagues, "excepting such parcels of land within said tract as have been heretofore reserved or dedicated to public use by the United States," the excepted portion to be included in the four leagues. Mr. Justice Field said, in his opinion in the circuit court, that "the evidence

of the reservations had been inadvertently omitted when the case was pending before the land commissioners," and that when it was offered by the United States district attorney the counsel for the city did not object to an exception of the public reservations. It is therefore plainly apparent that the city's attorney assented to what was generally understood to be the limitation upon the pueblo right and recognized the validity of the reservations.

Tenth. When the terms of the decree became known the citizens of San Francisco feared the result of an appeal to the Supreme Court, and under date of April 5, 1865, Senator Conness wrote to Attorney-General Speed, urging him to authorize the district attorney to stipulate for a settlement on the terms of the decree, with the condition to be added that the President of the United States should cause to be entered within six months from the date of the acceptance of the decree such additional parcels of land as the government should require for public uses, and further said:

The controversy about the title to the lands in question has hung like a pall over the city of San Francisco for sixteen years past, and has been a hinderance to its progress. The claims asserted under various authority have given rise to and sustained conflicts injurious to the public peace and prosperity, and the settlement will be hailed by the great body of the people there with unqualified gratification and joy.

May 18, 1865, Judge Field entered the decree making the exception above quoted. The United States thereupon appealed to the Supreme Court, and the city appealed from so much of the decree as included the excepted parcels within the four leagues, claiming the right to have four leagues over and above the reservations. The motions for appeal were denied, but subsequently allowed in obedience to a mandate, dated January 29, 1866, from the Supreme Court. Pending this appeal, Congress passed the act of March 8, 1866, which relinquished to the city the lands confirmed by the decree of May 18, 1865, "subject to the reservations and exceptions designated in said decree" (14 Stat., p. 4). This act passed with the approval of California's Senators and Representatives in Congress, and the great pueblo case was dismissed February 4, 1867.

Eleventh. To the testimony of Brooks and others that upon professional examination of titles they were unable to find any notice or evidence of any claim of the United States, it is enough to say that it seems to have been proved beyond question that copies of the President's orders were filed in 1851, 1853, and 1864 in the proper land office, and further that an inquiry made of General Keyes or General Halleck, who were in San Francisco from 1849 to 1860, and who were personally engaged in surveying, marking out, and protecting the reservations, as everybody in San Francisco must have known, would have disclosed the facts. But, however that may have been, the United States cannot fairly be called on to repair for the claimants any damage they may have suffered through any failure of duty on the part of the searchers of titles.

Twelfth. Haskell and Eggleston declare that they took possession in 1853, and the claimants under them seek to sustain their demand by the decision in *Norton vs. Hyatt* (8 Cal., 539), in which case the court held that the United States had no title to the land within the limits confirmed by the land commission. But this decision of the court was not made till 1857. And the same court in 1850, in *Woodworth vs. Fulton* (1 Cal., 295), declared that—

Lands within the corporate limits of San Francisco which had not been granted by the Mexican Government or its officers previous to the conquest of the country by the American forces constitute a part of the public domain of the United States, and cannot be transferred except under authority of Congress.

That was the law of California under which Haskell and Eggleston took possession of the lands.

The value of the lands in question, to be paid according to the provisions of the bill, would be not less than \$300,000, as the testimony shows.

Your committee, in conclusion, are unable to discover any satisfactory reason for conceding the equity and justice of the full claim made, or to find any basis for recommending payment of the value of these lands over to the present claimants rather than to any other of the many millions of our people.

But as the United States took possession of buildings and other improvements placed on the land at the private expense of the claimants, there is a clear and strong equity in paying for the same what the value thereof was at the time of the taking. The committee, therefore, recommend the passage of the accompanying substitute bill.



## SIGNATURES UPON NATIONAL-BANK NOTES.

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MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. BUCKNER, from the Committee on Banking and Currency, submitted the following

### R E P O R T :

[To accompany bill H. R. 4600.]

*The Committee on Banking and Currency, to whom was referred the bill (H. R. 4600) to prohibit engraved signatures upon national-bank notes, have considered the same, and beg leave to report:*

That the national banking act requires that the notes of national banks "shall be attested by the signatures of the president or vice-president and cashier." Some of the banks construe this provision as giving them power to have the signatures of these officers engraved or lithographed. Such, your committee believe, is not a fair construction of the law, and one of the safeguards against a counterfeit circulation is withdrawn by acting under such a construction. The Comptroller has called the attention of Congress to the subject, and the object of this bill is to provide by proper penalties for the enforcement of the law as your committee understand it, confining the operation of the act to any new issues, except reissues, of the banks. They recommend the passage of the bill, with a proviso such as indicated.





## LOANS BY NATIONAL BANKS ON REAL ESTATE.

MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. J. J. DAVIS, from the Committee on Banking and Currency, submitted the following

### R E P O R T :

[To accompany bill H. R. 1909.]

*The Committee on Banking and Currency, to whom was referred the bill (H. R. 1909) to authorize national banks to make loans upon mortgage of real estate, have had the same under consideration, and submit the following report:*

Under existing laws the national banks can lend money only "on personal security." While they may take mortgages "by way of security for debts previously contracted," they cannot lend a dollar on real estate, however ample the security. This bill proposes to make a change in this respect, and (as amended by the committee) to authorize banks to make loans to the amount of one-fourth of their capital and surplus upon the pledge or mortgage of real estate as a security therefor, subject to such conditions as may be required and imposed by the board of directors of the respective banks, either specially made or expressed in the by-laws which may be adopted for the government of each particular national banking association.

Since the enactment of the law creating national banks nearly all other banks of issue (by reason of the heavy taxes imposed upon them) have gone out of existence, and the national banks have become almost the exclusive agencies of banking business and the principal media through which loans are negotiated. It is not necessary here to allude to the reasons which induced Congress, in a time of severe trial, to enact the national-banking law. It is sufficient to say, as will be generally conceded, that the paramount purpose was to strengthen the national credit and enhance the value of the bonds of the government rather than to furnish simply a banking system for the accommodation of the masses of the people, and hence such restrictions were put upon all other banks as to preclude rivalry and competition, and the national banks themselves were organized with conditions and restrictions designed to increase the value of national securities. While the restrictions which the present bill proposes to remove may work no injury to commercial and manufacturing interests, which are chiefly carried on in or near cities, where bills of exchange, checks, and drafts are made to answer the purposes of money in the payment of debts and transactions of business, and where loans are made and desired only on short time to meet the wants of active trade and traffic, it is felt as a

great hardship and a needless and injurious restriction upon banks in the agricultural portions of the Union, where the chief wealth consists in lands, and where money is needed to aid in their cultivation and improvement. In those localities where there has been an aggregation of stocks, commercial and other securities, which have been chiefly utilized in banking, and where the vast bulk of the money and wealth of the country, consisting of railroad, manufacturing, and commercial securities, have, by the laws of trade, been attracted and concentrated, neither the banks nor the people have felt this restriction to any very great extent. In such localities the banks do not depend for their business upon, nor are they so necessary to, the agricultural classes. But this is not the case in those sections where agriculture is the chief or leading occupation of the people, and this, in point of area and numbers engaged in it, is larger than any other interest in the country and nearly equal to all others combined. The interests of the Great West are principally agricultural, and those of the South almost entirely so. The lands in these sections, with their products of wheat, corn, and other grains, their tobacco, cotton, and rice, constitute the capital and chief wealth of the people. For the improvement of these lands and the production of crops money is needed by enterprising men, and the interests of the banks and of the people alike demand a change in the law, that will enable the banks to find a safe security and the people reasonable accommodation in loans.

It is a singular fact that in a country largely agricultural the wants of that interest are entirely ignored in our banking system, or, if not ignored, recognized only by prohibitory discriminations which exclude the agriculturist from all benefits under the law. The farmer, though owning valuable lands, is denied by law all accommodations at the bank unless he can give "personal security," while the holder of bonds or stocks finds no difficulty in borrowing. A, whose wealth consists in bonds or railroad or manufacturing or mining stocks, can borrow money at the bank to enable him to enlarge his operations and increase his wealth, while B, with ten times his wealth in land, cannot borrow a dollar on it at the bank, because the law does not allow the loan to be made. It is not to be wondered that this is being felt as an injustice, and that complaints are being made. It has been well said that "it seems to have been the theory that agriculture must shift for itself, and that commerce and the moneyed interests are alone entitled to the special consideration of the Federal Government. The bank act forbids the making of any loan on real estate securities, and thrifty farmers, who have only fertile fields to mortgage as security for their loans, are deprived of all accommodation at the national banks. Such a provision seems utterly repugnant to the genius of our people. To lay it down as an inflexible rule that agriculture should be excluded from deriving whatever benefit might accrue to it from the possession of banking privileges is to strike a blow not only at the honor and interests of a large class of our citizens, but at the general welfare of the whole country."

In the South, and to a great extent in the West, the banks are now confronted with the fact that there is not enough commercial paper—paper based upon actual transactions on existing values—offered to make the volume of business to enable them to pay their expenses and taxes, now that the high rates of interest that prevailed a few years ago can be no longer obtained; and this is evidenced by the increasing falling off of late years in the line of discounts and loans by the national banks, especially in the South, which have tended to depreciate the value of their stocks, and which will, perhaps, result in the necessity of closing

up some of them unless this restriction is removed; but if this restriction shall be removed and the farming classes shall be permitted to borrow upon real estate, which is their capital, it will eventually result in a reduction of the rate of interest, benefiting the people and the banks at the same time; for it may be safely said that increased business, with facilities for procuring money on safe securities, will produce reduced rates of interest. There can be no safer basis for loans than real estate in agricultural sections. It has been said that the shrinkage in the value of real estate has been the source of great loss to savings banks, and it is suggested that similar consequences may follow the removal of this restriction on the national banks. It must be borne in mind that at the time of these losses by savings banks there was a general depreciation in all values, and their loans were chiefly on city real estate, which is much more fluctuating in value than farming lands, and, besides, the disasters to the savings banks resulted rather from the mismanagement of the officers of those banks than from loans upon real estate. But there is no analogy between the savings banks and the national banks. In the former there is no security for those trusting them except in the fidelity and capacity of their officers—they manage other people's money; in the latter there is protection in the bonds deposited and in the stringent requirements governing their administration. It may be safely assumed that the national banks can and will take care of their own interests—they manage their own money. Remove this restriction, and you at once open a field for the safe and profitable use of their money, and at the same time extend to the farming interests, especially of the South and West, the aid they so much need for the development of their great agricultural resources, and this will promote every other interest, for it will be conceded from the cultivation of the soil all are supported, and without agriculture every other interest would dwindle and die; and yet there is hardly any other class of industry in the country that has not received more of the fostering care and attention of the government, national and State, than this, in which so many millions of our people are engaged. Many of the farmers of the South are forced to raise the money necessary to pay for labor and supplies to carry on their operations through brokers and merchants at a cost of 25 per cent., and frequently more, above the ordinary cost and interest for the advances made, and these advances are secured by liens and mortgages on their crops, personal property, or lands. This has been disastrous to thousands of farmers. But it is asked, why cannot the farmer who has land give personal security? The answer is, that this cannot always be done; and if you allow him to give his land as security, it costs him nothing, and puts him under no obligations to any one.

The bill, as amended by the committee, proposes to authorize the banks to make loans upon real estate to the amount of twenty-five per cent. of capital and surplus, and certainly, with this limitation, there can be no danger of such a withdrawal from the resources of the banks by such investments as to cripple their operations or endanger their solvency. There is nothing compulsory in the bill. It simply gives the authority to any bank, at its option and in its discretion, to lend a portion of its money upon mortgages. It is not mandatory. As has already been said, the creditors of the banks are amply protected, and it may safely be assumed that banks can take care of themselves; then why not permit them, when they may so choose, to accommodate the farmer? Why say to the banker, though the farmer needs your money and though a loan to him on his real estate will give to you safe employment for a portion

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of your money, and to him the means of enlarging his operations, yet you shall not accommodate him? It will not be easy to find an excuse for this upon any principle consistent with the genius of our government or with that freedom of action which should belong to an intelligent and free people.

If, in any locality, by reason of its wealth and commercial resources, there shall be no need for the change, it can do no harm—it will only be a dead letter so far as that locality is concerned, for the banks there can refuse to lend upon real estate, if this bill shall become a law, just as they are now prohibited, and each bank can make its own by-laws, rules, and regulations controlling the use and investment of its funds. In whatever aspect we view this measure, we cannot see any possible objection to it founded in justice; on the contrary, your committee believe that it will be of great benefit to the agricultural sections, especially of the South and West, and an injury to no class or interest. It will aid in the development of our agricultural resources and promote the prosperity of the whole country.

For these reasons, among many others which might be adduced, we report back the bill as amended, with the recommendation that it do pass.

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**RETURNS OF NATIONAL BANKS.**

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**MARCH 31, 1880.**—Referred to the House Calendar and ordered to be printed.

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**Mr. PRICE**, from the Committee on Banking and Currency, submitted the following

**R E P O R T :**

[To accompany bill H. R. 4572.]

*The Committee on Banking and Currency, to whom was referred bill H. R. 4572, having considered the same, submit the following report :*

By section 5211 of the Revised Statutes it is provided that every national bank shall make to the Comptroller of the Currency not less than five reports in each year, all of which reports shall be verified by the oath or affirmation of the president or cashier and attested by the signatures of at least three directors. It has been the custom to have these reports verified before a notary public. Recently, however, the question has been raised in one of the United States courts as to the validity of a verification thus made.

This bill is unanimously reported by the Committee on Banking and Currency to settle any question of this kind that may hereafter arise.

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CITY NATIONAL BANK OF MANCHESTER, N. H.

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MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. CRAPO, from the Committee on Banking and Currency, submitted the following

REPORT :

[To accompany bill H. R. 3794.]

*The Committee on Banking and Currency, to whom was referred the bill (H. R. 3794) authorizing the City National Bank of Manchester, N. H., to change its name, have had the same under consideration, and submit the following report :*

The ownership of this bank having changed hands by the transfer of a majority of its capital stock from former to present stockholders, and a new board of directors and officers now having the management of its affairs, it is desired by present stockholders and managers to change its name. The bank at some time in the past met with losses by reason of bad investment, and this was the chief reason leading to the change of ownership and management. As now owned and managed it is, to all intents and purposes, a different corporation from that originally organized as the City National Bank of Manchester. The condition of the bank is sound, and the rights of creditors of the bank and the public are fully protected by the provisions of the bill.

The committee unanimously recommend the passage of the bill.





BLUE HILL NATIONAL BANK OF DORCHESTER, MASS.

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MARCH 31, 1890.—Referred to the House Calendar and ordered to be printed.

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Mr. CRAPO, from the Committee on Banking and Currency, submitted the following

REPORT:

[To accompany bill H. R. 4006.]

*The Committee on Banking and Currency, to whom was referred the bill (H. R. 4006) to authorize the Blue Hill National Bank of Dorchester, Mass., to change its location and name, have had the same under consideration, and submit the following report:*

At the time of the organization of the Blue Hill National Bank its location was in the town of Dorchester; since then, the territory of Dorchester has been annexed to Boston. It is now proposed to change the location of the bank about 80 rods in the same business village, but within the territorial limits of Milton.

The reasons for the change are as follows: Reduction of expense in rental of banking-rooms, and increased convenience to the patrons of the bank by its new location, near the railroad depot, post-office, and stores. Within a few years a number of business houses and manufacturing establishments which were in the vicinity of the present banking-house have been moved to the part of the village which is within the territory of Milton.

The affairs of the bank have been satisfactorily managed, and are in sound condition. The rights of creditors and the public are fully protected by the provisions of the bill.

The committee unanimously recommend the passage of the bill.

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## RECOINAGE OF THE HALF-DOLLAR.

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1, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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AFLIN, from the Committee on Coinage, Weights, and Measures, submitted the following

### REPORT:

[To accompany bill H. R. 5530.]

Committee on Coinage, Weights, and Measures have instructed the committee to report to the House the accompanying bill as a substitute for House bill No. 2704, and to ask that it be read the first and second time and referred to the Committee of the Whole House on the state of the Union.

The substitute bill provides for the recoinage of the silver coins of the United States of the denomination of a half-dollar, and of the coins provided for by the act of February 21, 1853 (192 grains), and of the coins of February 12, 1873 (192.9 grains), now in the Treasury of the United States, or that hereafter shall be paid into the Treasury, into coins of 206½ grains; and the committee ask that said bill and report be printed for the use and convenience of Congress.

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**LIGHT-HOUSE AT SAMPIT RIVER, SOUTH CAROLINA.**

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**MARCH 31, 1880.**—Referred to the Committee on Appropriations and ordered to be printed.

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**MR. REAGAN**, from the Committee on Commerce, submitted the following

**REPORT:**

[To accompany bill H. R. 3332.]

The Committee on Commerce, to whom were referred petitions of citizens of Georgetown customs district, in the State of South Carolina, praying the reconstruction of the light-house destroyed by fire at the mouth of Sampit River, together with bill H. R. 3332, have considered the same, and report back the bill with the recommendation that it do pass.

The difficulty of the navigation of the Sampit River, harbor of Georgetown, has been in no way overcome, but remains, and the necessity which originally justified the erection of a light to enable vessels safely to enter the harbor now demands that it should be replaced.



THOMAS SAMPSON.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BLISS, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 146.]

*The Committee on Commerce, to whom was referred the bill (H. R. 146) authorizing the Secretary of the Treasury to award a life-saving medal to Thomas Sampson, of New York City, beg leave to submit the following report:*

On June 20, 1874, an act was passed by Congress authorizing the Secretary of the Treasury to "prepare medals of honor, to be distinguished as life-saving medals, and to be bestowed upon persons who should thereafter imperil their own lives to save the lives of others from sea."

Sampson had, at various times prior to the passage of said act, rescued a number of persons from drowning, and for which he has received medals from the mayor of the city of New York, the New York Humane Society, German Turners' Society, Board of Underwriters of New York, and from Richmond County Society.

His having performed these deeds before the passage of said act debars him from making application for the medal to the Secretary of the Treasury, as required by law.

Sampson has also rendered valuable services to the country in detecting and bringing to conviction noted criminals, and persons engaged in forgery and other crimes, and has received medals for the same from the New York Stock Exchange, the brokers, and from the citizens of New York. He is employed as detective at the sub-treasury at New York City, and is highly indorsed by merchants, bankers, and citizens for his services as above stated.

In view of the foregoing, your committee recommend that the bill do pass.

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## LIGHT-HOUSE AND FOG-BELL ON BLOODY POINT BAR.

1890.—Committee on Commerce discharged, and referred to the Committee on Appropriations and ordered to be printed.

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WILLIAM A. RYAN, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 4254.]

*Committee on Commerce, to whom was referred the bill (H. R. 4254) for an appropriation for the erection of a light-house and fog-bell on Bloody Point Bar, Kent Island, respectfully submit the following report:*

A petition numerously signed by representatives of steamship and boat lines navigating Chesapeake Bay, and others interested, asks that a light-house and fog-bell at the point indicated in the accompanying map be erected as a necessity. The bar referred to prolongs a distance into the bay towards the west and south, is covered by shallow water, and at its termination the depth changes abruptly to a distance from about seven feet to ten fathoms or more. Several vessels have been wrecked upon this bar, and others have grounded on the opposite side of the bay in endeavoring to avoid it. Eastern Bay, on the southeast side of Kent Island, is said to be the only secure anchorage on the east side of Chesapeake Bay accessible to vessels of all tonnage, and this light is needed as a guide into it when northwest winds prevail or ice is running in the bay. Such aid to safe navigation is not only of great value to the rapidly-growing foreign, coastwise, and ordinary commerce of the city of Baltimore, but, in addition, there are more than 3,000 pungies, sloops, and canoes, with ten or twelve thousand persons on board, engaged in catching and carrying oysters in the western portion of Chesapeake Bay and its tributaries during the most productive season of the year, and it is indispensable to their safety that they should have the assistance of this light in their efforts to escape the perils to which they are constantly exposed.

The Light-House Board, to whom the bill was submitted, report to the Secretary of the Treasury, through their engineer secretary, as follows:

This matter has been carefully considered by the Light-House Board, and that opinion has been reached that a light on the bar off Bloody Point would serve as a valuable aid to navigation. The board is of the opinion that the appropriation proposed to be made by the bill in question, namely, \$25,000, is not in excess of that would be needed for the establishment of a light-house and fog-bell at the point named, and respectfully recommend that the same be made.

The committee are convinced of the necessity for the light-house and fog-bell proposed, and therefore report the bill to the House and recommend its passage.



## MARINE-HOSPITAL SERVICE.

MARCH 31, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. McLANE, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 553.]

The Committee on Commerce respectfully submit the accompanying letter of the Supervising Surgeon-General as their report, to accompany "An act to increase the efficiency of the Marine-Hospital Service."

TREASURY DEPARTMENT, *January 14, 1880.*

SIR: I have the honor to invite the favorable attention of Congress to the draught of a bill, herewith transmitted, to increase the efficiency of the Marine-Hospital Service, and to the accompanying letter in explanation thereof from Dr. J. B. Hamilton, Surgeon-General of that service.

It is believed that the enactment of the bill substantially in its present form into a law would place the service upon a better footing without materially increasing its expense.

Very respectfully,

JOHN SHERMAN,  
*Secretary.*

Hon. SAMUEL J. RANDALL,  
*Speaker of the House of Representatives.*

TREASURY DEPARTMENT,  
OFFICE SUPERVISING SURGEON-GENERAL,  
UNITED STATES MARINE-HOSPITAL SERVICE,  
*Washington, January 13, 1880.*

SIR: I have the honor to transmit herewith the draught of a bill to "increase the efficiency of the Marine-Hospital Service," and to request that, if the draught is in accordance with your views, it be transmitted to Congress. The general object of the bill I assume to be in accordance with the recommendations you have repeatedly made, that statutory provision be made for the appointment of officers and employés of this service.

Section 1760, Revised Statutes, prohibits the appointment by the Secretary of any person to any office not authorized by law, or subsequently sanctioned by law. The law has, by implication, subsequently sanctioned the employment or appointment of such officers in the text of several health laws passed in 1878 and 1879. No authority exists, in terms, for the employment or appointment of any person in the Marine-Hospital Service, with the exception of the Supervising Surgeon-General. The various circulars and regulations that have been issued from time to time since 1802, by the Treasury Department, governing these appointments, have been based upon the general law of 1798, which created the fund, and left all the details of its management to the Secretary of the Treasury.

It has been found expedient, as time demonstrated its necessity, that the system of these appointments should be made uniform, and the proposed bill only aims at regulating by law what has for several years been the practice of the department.

To quote from a report made by Drs. Thomas O. Edwards, of Lancaster, Ohio, and George B. Loring, who were appointed "to collect facts and information in relation to marine hospitals and the marine-hospital fund," under the provisions of the act of March 3, 1849:

"This [the marine hospital] is almost the only direct tax laid by the government. The power to lay it has always been granted on account of the highly charitable object in view. \* \* \* As the questionable legality of the taxation is laid aside by common consent, it is only asked that while it is continued it may be rendered distinct in all its operations. Once received, its expenditure can only be made with propriety and justice by rendering it the endowment of a system of well-ordered hospitals which shall be devoted to the seamen of the United States, and shall protect them against poverty and almshouses in times of sickness. \* \* \* It should be expressly understood that, let the man go where he will in the Union, in an American vessel, as an American seaman, he will find support provided for him in his disability, temporary, but sufficient to restore him to active service. The greatest defect found by the commission was that the methods of government and internal regulation were not uniform, that the position of the hospital at Mobile was as distinct and different from that at Norfolk or New Orleans as if one were a hotel and the other a hospital. In one district the surgeon resides within the limits of the hospital grounds; in another he pursues his private business in the circuit of his city, and an assistant represents him for months in the wards of his hospital. Here the surgeon selects his own steward; there the collector of the district makes the appointment himself. In order that suitable professional information may control the system, and give it such a position as it deserves, it is proposed to place it under the charge of a chief surgeon, who shall have his bureau attached to the Treasury Department. The regulations which are to govern the hospitals should emanate from him. \* \* \*

"The knowledge to be obtained at the bureau should be correct and detailed in all matters relating to the diseases, patients, expenses, management, &c., of the hospitals under his control. And he should regulate the number and position of persons employed in these hospitals, in a way most conducive to the development of fine medical institutions, devoted to the physical wants of a large class of men. Placed on this footing, there is no system of hospitals that would be more respectable and useful. Laying aside for a moment the benefit which might thus arise to the recipients of the bounty, the amount of valuable statistics which might be gathered for the medical profession is almost unbounded. The course which would bring marine hospitals up to the standard which they should maintain, and would carry their results into the pages of science, would at the same time render them doubly useful in the work of relief for which they were founded."

The results thus clearly foretold in this report, made thirty years ago, have been accomplished; the reports of the service are sought after by the medical profession; the standard of professional requirements necessary to gain admission into the service is high—78 per cent. of all applicants for admission into the corps having been rejected during the past year; the sailors are satisfied as a body; and the popularity of the officers is evidenced by the steadily increasing number of patients from year to year. But in order to maintain the service at its present high standard of excellence, and to attract to it young men of the highest ability, the methods of appointment and the rates of compensation must be regulated by law.

Experience has shown the present system—the one recommended in the bill, and already in practice by the department—to be that best adapted to carry out the purpose of the founders of the law, and that most creditable to the government.

That the general expenses of the service are diminished rather than increased by the appointment of medical officers is conclusively proven by the following table, taken from the annual report for 1879:

## MARINE-HOSPITAL SERVICE.

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## COMPARATIVE ECONOMIC EXHIBIT.

The following tabular statement will serve to illustrate the results of the reorganization of the Marine-Hospital Service in 1871. (Prior to 1868 no separate records were kept from which the actual cost of the service for each fiscal year can be ascertained.)

*Operations of the Marine-Hospital Service from July 1, 1867, to June 30, 1879.*

Fiscal years.	Number of places at which relief was furnished.	Number of sick and disabled seamen furnished relief.	Average cost for each seaman relieved.*
<b>Prior to reorganization:</b>			
1868	64	11,535	\$37 24
1869	64	11,856	36 98
1870	74	10,560	38 41
<b>After reorganization:</b>			
1871	72	14,256	31 78
1872	81	13,156	30 12
1873	81	13,529	31 22
1874	81	14,364	27 01
1875	84	15,009	27 99
1876	84	16,808	26 25
1877	100	15,175	24 22
1878	210	18,223	20 04
1879	210	20,922	17 93

\* This ratio is obtained by dividing the total expenditure by the number of seamen treated.

The expenses were slightly increased during the last fiscal year, owing entirely to the larger number of patients, yet the expenditures in the year 1871 reached \$483,758.73, and exceeded those of 1879 (\$375,164.01) by \$108,594.82, while the number of patients was 6,636 less in 1871 than in 1879. In 1871 there were 11 medical officers employed. The following table shows the receipts and expenditures from 1859 to 1878, inclusive

Year.	Balance on hand at the beginning of the fiscal year.	Receipts from all sources.			Aggregate.	Expenditures by warrant.		Balance on hand at the close of the fiscal year.
		Hospital dues.	From sales and leases of property.	Appropriations by Congress to meet estimated deficiencies.		Gross.	Net.	
1860	\$28,136 97	\$172,073 09	.....	\$275,000 00	\$477,467 43	\$456,850 46	\$455,593 10	\$20,618 98
1861	20,610 96	185,172 43	.....	175,000 00	355,839 25	313,968 02	308,019 13	41,871 26
1862	41,871 26	128,326 97	.....	200,000 00	374,864 70	285,013 88	280,441 41	79,550 82
1863	79,550 82	118,307 74	.....	200,000 00	403,281 04	283,946 08	283,953 60	126,324 96
1864	126,324 96	117,824 05	.....	100,000 00	423,695 89	207,638 82	200,911 84	156,237 17
1865	156,237 17	128,656 30	\$1,356 64	150,000 00	440,641 05	354,429 40	349,829 46	86,420 68
1866	86,420 68	142,282 81	.....	170,000 00	423,862 34	301,107 27	353,968 39	62,755 07
1867	62,755 07	150,021 00	86,129 40	200,000 00	518,823 70	440,032 31	422,134 02	78,771 45
1868	78,771 45	175,977 15	11,753 20	250,000 00	541,176 32	471,321 05	446,840 53	69,655 27
1869	69,655 27	174,965 95	16,784 34	200,000 00	474,719 70	419,403 37	406,069 23	55,316 33
1870	55,316 33	168,153 70	14,520 30	200,000 00	448,784 20	378,580 71	367,790 84	70,192 49
1871	70,192 49	263,562 14	46,264 87	250,000 00	702,972 36	526,661 39	483,758 73	176,290 77
1872	176,290 77	319,823 16	21,225 11	150,000 00	693,121 98	484,855 08	439,072 14	228,266 90
1873	228,266 90	333,003 03	440 00	125,000 00	710,851 83	424,360 59	396,518 69	287,491 24
1874	287,491 24	352,379 98	1,210 00	100,000 00	749,724 48	419,746 61	411,103 35	329,977 87
1875	329,977 87	338,963 78	6,010 01	.....	778,738 74	414,257 69	410,400 61	364,481 05
1876	364,481 05	351,129 59	1,739 58	.....	727,022 72	456,013 10	440,340 38	271,080 84
1877	271,080 84	373,862 28	6,026 00	.....	659,502 83	384,422 57	375,817 86	275,080 26
1878	275,080 26	371,310 99	1,029 00	.....	655,813 03	376,347 00	367,950 32	279,460 03

It will be seen from the foregoing table that the expenditures of the year 1879, were less than those of thirteen of the nineteen previous years, and the six years showing a less expenditure, with the single exception of 1878, were during the war, when commerce was reduced to a minimum and many American vessels registered and sailed under a foreign flag.

The proposed bill, if passed, will not increase the corps to the extent of creating any supernumeraries, and will only allow barely enough officers to fill the places where they are urgently needed. At several of the principal stations, where the daily average of patients on hand ranges from 25 to 60, there is but a single medical officer on duty, and no one to relieve him during sickness or to allow of leave of absence. The writer can state that, during his three years service at several different stations, he has never been able to obtain a leave of absence, owing to the impracticability of finding any officer to relieve him, and he has known several instances where officers, having been obliged to leave their station, owing to sickness in the family, or other causes, were compelled to employ a substitute at their own expense.

The clerical work required of, and performed by, the medical officers of this service is many times greater than that required of the officers of any other medical service under the government, and as the number of sailors is estimated at 170,000, no other service has an equal number of patients.

This service also stands alone in the facility with which the actual expenses may be determined, inasmuch as there is no separate department in which all transportation, order orders, freight and repairs of buildings is accounted for; no department in whose general estimates the pay of the medical corps lies hidden; no department from which the rations are drawn and the patients subsisted; but, on the contrary, all its figures are open and easily accessible.

Section 1 of the proposed bill limits the number of surgeons to thirteen, the number actually in the service at this date. The number of passed assistant and assistant surgeons is limited by the bill to twenty, an apparent increase of three, but a real decrease of one, as one assistant surgeon whose resignation was only recently accepted leaves a vacancy still unfilled, and the promotion of one assistant surgeon, vice Surgeon Ellinwood, resigned, leaves another. For reasons stated above the number of medical officers proposed by the bill is still inadequate to meet the actual needs of the service, but the number of subaltern officers is reduced to twenty, to meet what I conceive to be the wishes of the department.

The necessity for the enactment of section 2, which simply prescribes that original appointments shall be made to the grade of assistant surgeon only and that they shall be thoroughly competent, is too obvious to require comment.

The same remark is applicable to section 3, which prescribes that three years shall elapse after appointment, in addition to a record of fitness and professional ability, before any assistant surgeon shall be promoted.

Section 4 follows as a natural sequence, and is in my opinion calculated to develop that *esprit du corps* essentially necessary for the maintenance of discipline and efficiency in a civil service.

Section 5, fixing the compensation, places it at the rate already authorized by existing regulations.

Section 6 allows of the retention in the service of the medical officers now in the service.

Section 7 is obviously necessary for the government of mixed boards, as officers of the two services are usually detailed to serve together in the annual inspection of life-saving crews and the examinations for promotion of officers of the revenue marine.

Section 8 provides for contracts with private physicians at small ports. It is now the practice to make an appointment of such physician as an acting assistant surgeon, but there is no provision for any liquidated damages to the department in case of a failure to perform the duties of the office, which provision might be inserted in a contract.

A case recently occurred where at a small port on Lake Superior a sailor, having dislocated his thigh, was sent by the collector to the nearest physician, who reduced the dislocation. The physician made a charge of \$30, which was allowed by the fee bill of the county, and was the regular and usual charge. A similar accident happening at a port where there was a contract surgeon would have cost nothing beyond the annual compensation, which in some cases is fixed as low as \$100. It is then a measure of economy that this section should be enacted.

Section 9 regulates the method of the appointment of hospital stewards, engineers, attendants, and laborers, and as it is simply based on the department regulations, will not change the present conditions except to specifically legalize the appointments.

Section 10 covers the appointment of the clerks and other employés in this office. As the Solicitor of the Treasury has decided that there is no provision in law for the appointment of a chief clerk in this office, it was thought proper to provide for the performance of the routine office work during the temporary absence of the chief officer

## MARINE-HOSPITAL SERVICE.

of the service, which has been done in section 11. The same section also authorizes the detail of a steward in the office of the purveyor. This is necessary for the proper examination of the medicines previous to shipment, and a steward has been so employed for the past two years.

I am, sir, very respectfully, your obedient servant,

JOHN B. HAMILTON,

*Surgeon-General, U. S. Marine-Hospital Service.*

Hon. JOHN SHERMAN,  
*Secretary of the Treasury.*

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IFE-SAVING STATION AT LOUISVILLE, KY.

80.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

S TURNER, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5532.]

tee on Commerce, to whom were referred the resolution of the city council and the petitions of the merchants and steamboat-louisville, Cincinnati, and Pittsburgh, praying for the establishment of a life-saving station at the Falls of the Ohio River at Louisville, the bill (H. R. 1940) making an appropriation for the establishment of the same, respectfully report:

have carefully considered the same, and are satisfied that the establishment of a life-saving station at Louisville, Ky., is demanded by the interests of commerce and humanity.

The committee are aware of the fact that it has not been the practice of the Government to establish such stations at interior points away from the coast, but can discern no good reason why the Government of the United States should not exercise the same kindly care in the preservation of the lives of seamen who navigate the waters of the Ohio and Mississippi Rivers as of those who navigate the ocean.

The circumstances of this case are exceptional. At Louisville the falls of the Ohio River present a dangerous obstruction to navigation. There is a fall of twenty-five or six feet in one mile and the river for that distance is obstructed by reefs, rocks, and bowlders, which make its navigation very perilous, and many valuable lives have been sacrificed in the attempt to pass the commerce of the country over them.

The dangers have been recently augmented by the erection at the falls of a Weitzel dam.

Copies Nos. 1 and 2, cut from the Louisville Courier-Journal of the 1st and 2nd of March, 1879, and filed as a part hereof, and the affidavit of Richard Glasco, and the letters of O. W. Davis and E. W. Cole, and of the Louisville Board of Trade, show that recently several lives have been lost at this point, a number of others only saved by the heroic efforts of gallant men and citizens. Said letters and affidavit are made a part hereof. The General Superintendent of the Life-Saving Service, in his report for 1879, recommends the establishment of the life saving station provided for by the bill and petition. An extract from his report, giving the reasons for the establishment of such station, is made a part hereof, marked B, and also a resolution of the Kentucky legislature recommending the establishment of such life-saving station.

Therefore, of opinion that such life-saving station should be established, and recommend the passage of the bill herewith submitted in connection with House bill No. 1940.

## No. 1.

## RESCUED—ANOTHER LIFE SNATCHED FROM A WATERY GRAVE BY THE HEROES OF THE FALLS.

About half past eight o'clock yesterday morning a boy, about thirteen years of age, named Aleck Errigan, living on High street between Twelfth and Thirteenth, got into a skiff at Fifth and the river. He paddled around some, but did not notice that he was drifting out toward the dam until he got into the current, when he was powerless to guide his boat. He went over the dam, and was being borne on downward to death, when the vigilant Devan saw him. He got into his boat quickly, followed by Tully and Gillooley, and soon they were speedily on to the rescue. When they reached the unguided boat it was within a few yards of what is known as Backbone Rocks, which are near the bridge. They took the thoroughly frightened boy into their skiff, and, securing the boat to theirs, pulled for the shore, and were soon on dry land, much to the joy of the boy, who immediately ran home.

This is the fifty-first life saved by the life-savers, and the legislature will have its attention attracted to them just at the right time.

## No. 2.

The rescue of three more men from the perils of the falls by Devan and his comrades, mentioned yesterday, is one more argument in favor of the establishment here of a government life-saving station. Perhaps at no point on the waters or coast of the United States has there been a greater number of accidents and casualties than here at the falls and dams. Mr. Willis is pressing the project in Washington with good prospects, the chief of the life-saving department having agreed to indorse the bill. A resolution in favor of it has been prepared for the State legislature, and will doubtless be adopted. When the station is determined upon, Devan, Gillooley, and Tully should be placed in charge, for they have shown their worth by their works.

PORTLAND, KY., *January 27, 1880.*

DEAR SIR: I take pleasure in mentioning William Devan and John Tully as gentlemen eminently fitted for the place they are asking to be appointed to. I have been witness to their rescuing three men from drowning on the Falls of the Ohio this morning. I don't doubt you will be able to get the government to establish the Ohio Falls life-saving station, and the appointment of the worthy men above mentioned to places in the station. They not only saved the men's lives, but have been unceasing in their attention to the unfortunate men since their rescue.

Respectfully,

O. W. DAVIS,  
*Captain Steamboat E. W. Cole.*

Hon. ALBERT WILLIS, *Washington, D. C.*

LOUISVILLE, KY., *January 28, 1880.*

DEAR SIR: I have just witnessed the saving of the lives of three men from drowning by William Devan and John Tully. The men are now in my shanty at the float, very much exhausted, one of them having been sucked under the dam seven times and very badly bruised. Now I am satisfied that a life-saving station is as necessary here as at any other point in the Union. I would suggest that you see the proper parties in order to hasten it up. I write this without the knowledge of Devan or Tully. I know they are brave men, and Devan has a heart in him as big as an ox.

Yours, truly,

JOHN W. BOWSER.

Hon. A. J. WILLIS.

THE STATE OF INDIANA,  
*Clarke County:*

Before me, \_\_\_\_\_, personally appeared Richard Glasgow, Barney Carroll, and Nathan Beck, citizens of said county, who are known to me, and who, being duly

sworn, say that on the night of the 27th January, 1880, about 2 o'clock a. m., a skiff in which they three were attempting to cross the Ohio River from the Kentucky side was carried over the dam at Louisville and capsized, and affiants all thrown out into the water, and that affiant Glasgow was drawn under the water five or six times by the back action of the water; that affiants were in the water five hours, and were rescued from their perilous situation by William Devan and John Tully, who came promptly to their aid as soon as informed of it.

DICK GLASGOW.  
BARNEY MCARDLE.  
NATHAN BECK.

Subscribed and sworn to before me, Ephraim Keigwin, a justice of the peace for Jeffersonville Township, Clarke County, Indiana.

EPHRAIM KEIGWIN, J. P.

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B.

*Extract from report of the General Superintendent of the Life-Saving Service for 1879.*

Under the caption of awards of medals, reference has been made to the rescue by three brave boatmen, since 1875, of forty-five persons from drowning in the rapids commonly known as the Falls of the Ohio, opposite the city of Louisville, Ky. Accompanying the evidence of the heroism of these boatmen were petitions for the establishment of a life-saving station at that point, indorsed by the supervising inspector of steam-vessels of that district, captains of vessels, and others familiar with the danger of these rapids, which is greatest at low water, and consists mainly of a strong chute which rushes between ledges of rocks projecting from either shore, and is called the suck. Boats attempting to cross the river are liable to be caught in this suck or in the currents trending toward it, which are extremely insidious, and, despite the most strenuous exertions of the rowers, to be drawn down the chute, where they are almost sure to be whirled over and their occupants drowned. Besides the persons saved in this locality by the boatmen above referred to, who, it seems, by their position as employes at a coal-wharf on the banks of the river have been enabled to be constantly on the watch for persons imperiled in the chute, and to put out promptly to the rescue, it appears that a considerable number, unperceived or unassisted by them or others, have at various times been drawn into the fatal trap of these rapids and lost their lives. The establishment of a life-saving station at this point is therefore recommended as highly desirable. Such a station would differ considerably in its equipments and organization from stations on the coast, but could easily be furnished with proper boats and other appliances adapted to the conditions.

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SCHOONER W. P. COX.

MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BEALE, from the Committee on Commerce, submitted the following

REPORT :

[To accompany bill H. R. 3285.]

*The Committee on Commerce, to whom were referred the bill (H. R. 3285) and the petition of R. C. Windley, praying that the name of his schooner W. P. Cox be changed to that of Annie V. Minor, beg leave to report :*

It appears from statements of the petitioner that this schooner, built, as certified by the collector, at Marshallville, N. J., in 1853, was purchased by him in Philadelphia, taken to North Carolina, and substantially rebuilt from keel to mast. In rebuilding very material alterations were made; the schooner originally having but two masts, in her change being rigged with three masts.

While your committee recognize the fact that in some cases the change of name may open the door to fraud upon creditors whose claims are liens upon the vessel, and are of the opinion that a general law upon this subject, throwing the necessary safeguards around all changes of name, would be greatly preferable to these individual acts, yet as the precedents are all in favor of such enactments, they see no reason why the prayer of the petitioner in this case should be made an exception; and therefore we recommend that the bill be reported favorably to the House.



NEW COLLECTION DISTRICT IN NORTH CAROLINA, AND  
A PORT OF ENTRY AT FAYETTEVILLE.

MARCH 31, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BEALE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 2470.]

*The Committee on Commerce, to whom was referred the bill H. R. 2470, having examined the same and submitted it for the opinion of the Secretary of the Treasury, submit the following report:*

From the letter herewith filed it appears the three first sections of the bill meet with his approval, and no opinion is expressed as to the two remaining sections. Looking to the broad provision of the Constitution touching commerce, and the prohibitory declaration found in clause three, section ten, article two, the fourth and fifth sections of this bill seem unnecessary. The alleged necessity for their enactment grows out of the legislation of the State of North Carolina.

That State had chartered a company more than eighty-five years ago for the improvement of the Cape Fear River, which company was authorized to demand toll of all vessels navigating the river in consideration of improving and keeping open said river for navigation; the charter is still in full force. To what extent the navigation of the river has been improved this committee is not informed; but the charter remaining in full force, a question of vested rights does arise in the consideration of this bill.

We find no decision of the United States Supreme Court expressly deciding this question; however, being of opinion no tonnage tax or duty can constitutionally be imposed by a State without the assent of Congress, we report back the bill, verbally amending the 1st, 2d, and 5th sections, and as thus amended recommend its passage.

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MARINE HOSPITAL AT CEDAR KEYS.

MARCH 31, 1880.—Laid on the table and ordered to be printed.

Mr. BEALE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 1026.]

*The Committee on Commerce, to whom was referred the bill (H. R. 1026) making an appropriation of \$50,000 to erect a marine hospital on Snake Key, at the entrance to the harbor of the port of Cedar Keys, in the State of Florida, report as follows :*

That after proper consideration of the same, in the light of information furnished from the Treasury Department in letters accompanying this report, they are of the opinion, and recommend, that the bill should be laid upon the table.

TREASURY DEPARTMENT,  
February 14, 1880.

SIR: I have the honor to acknowledge the receipt of your communication of the 7th instant, relative to the erection of a marine hospital at Cedar Keys, Fla., and in reply thereto to transmit a copy of a report made and transmitted to Hon. John B. Gordon, chairman of the Senate Committee on Commerce, in relation to the same subject, from which it will appear that while the government has no marine hospital at the ports of Philadelphia, Baltimore, New Orleans, and other of the large ports, the necessity for a hospital at Cedar Keys is not urgent.

Very respectfully,

JOHN SHERMAN,  
Secretary.

Hon. R. L. T. BEALE, M. C.,  
House of Representatives.

TREASURY DEPARTMENT,  
Washington, January 28, 1880.

SIR: I have the honor to acknowledge the receipt of your communication of the 23d instant, relative to the legislation proposed by bill S. 667, and asking for statistics from this department on the same. In reply thereto I have to inform you that the records of the office of the Surgeon-General of the Marine Hospital Service show the following statistics relative to the marine-hospital business at the port of Cedar Keys during the following fiscal years:

Year.	Patients.	Expenditures.
1873.....	2	\$10 00
1874.....	2	62 50
1875.....	3	30 00
1876.....	4	50 25
1877.....	6	55 25
1878.....	16	173 25
1879.....	37	236 65
1880, to date.....	18	(not given.)

## MARINE HOSPITAL AT CEDAR KEYS.

The arrangements for care of sick seamen for the present fiscal year includes furnishing board and nursing in a private family, at the rate of 58 cents per day, and the services of a physician at \$100 per annum. For "out-patients" \$1 each is paid for those furnished medicines and prescriptions—such as are not sufficiently sick to require board and nursing in addition.

From the above it will be seen that while the business at the port has been increasing, yet it does not appear at present to be such as to warrant the construction of a marine hospital, or the expenditure necessary therefor. The minimum hospital organization consists of one assistant surgeon, at \$1,600 per annum; one steward, at \$40 per month; laundress, at \$15 per month; and a cook, at \$20 per month. This necessitates an expenditure of \$2,500 per annum for the pay-roll alone. In addition to this, medicines, hospital furniture, kitchen and laundry supplies are required, which expense will be relatively increased or lessened in proportion to the number of patients. While it is believed that seamen could be more comfortably cared for in hospital than in private families, yet it is plain that it would materially increase the expense, and it would seem that while hospital facilities are as yet unprovided at Baltimore, Norfolk, Savannah, Galveston, and other points, it is scarcely advisable to construct a hospital at Cedar Keys until the business shall have materially increased. The amount of money provided for in the bill is believed to be about the proper amount for the construction of such a building as is needed. It would be well, however, if it is decided to construct a hospital, to include, also, say, \$1,500 for hospital furniture. It may be observed that under the law seamen from foreign vessels are entitled to admission to marine hospitals by paying a certain per-diem rate, which would lessen the ordinary expenses of the hospitals in proportion to the number admitted.

Very respectfully,

JOHN SHERMAN,  
*Secretary.*

Hon. JOHN B. GORDON,  
*Chairman Committee on Commerce, United States Senate.*

## HARBOR AT SAINT CHARLES, MO.

MARCH 31, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. CLARDY, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 5533.]

*The Committee on Commerce, to whom was referred the bill (H. R. 930) to improve the landing and harbor of Saint Charles, in the State of Missouri, have had the same under consideration, and beg leave to report :*

That under the requirements of the second section of the river and harbor act of June 18, 1878, a survey was made under the direction of Major Suter, of the Corps of Engineers, United States Army, of the Missouri River in the vicinity of Saint Charles, Mo., and estimated the cost of the improvements necessary to protect the landing of Saint Charles from being filled up at \$80,000. These works are to be placed on the south bank of the Missouri for the purpose of preventing any further erosion of the alluvial banks of this river. Within the last few years this erosion and washing away of the light alluvial soil of the south bank of the river has increased very much, and not only threatens to destroy the landing of the city of Saint Charles, but will greatly imperil the navigation of the river under the spans of the Saint Charles bridge over the Missouri River at that place.

Your committee are of the opinion, from the evidence before them, that this danger to the navigation of the river, and to the entire destruction of the landing at Saint Charles, will be greatly augmented if the usual rise takes place in the Missouri in May and June, and the destruction of the banks of the river continues at the same rate as for some years past, and the cost of the improvements necessary to prevent this result will be more than duplicated.

The committee therefore recommend an appropriation of \$40,000 for this improvement, to be made available on the passage of this act, and report the accompanying substitute for bill H. R. 930, and recommend its passage.



BRIDGE OVER ALABAMA RIVER, NEAR SELMA, ALA.

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31, 1880.—Referred to the House Calendar and ordered to be printed.

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REPORT, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5534.]

*Committee on Commerce, to whom was referred the bill (H. R. 3338) to authorize the construction of a bridge across the Alabama River at or near Selma, Ala., report that they have had the same under consideration, and leave to submit the accompanying substitute for said bill :*

Sections 1, 2, and 3 of the substitute presented are substantially the same as the corresponding sections in the original bill. To these the committee have added sections 4 and 5.

Provisions of the substitute, providing that "the draw shall be in the main channel of the river at a navigable point, and with spans of not less than 160 feet in length in the clear on each side of the central pier, and the piers of said bridge shall be as near as may be to the current of the river, are, in the opinion of the committee, sufficient for the protection of navigation on said river ; while the controlling control given to the Secretary of War by section 4 of the act authorizing the construction of said bridge will enable him to see that the bridge is constructed in accordance with law, but that the interests of navigation are fully protected.

The committee therefore recommend that the substitute presented be passed.



## HARBOR AT DELAWARE BREAKWATER.

January 31, 1880.—Referred to the House Calendar and ordered to be printed.

REPORT, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany H. Res. 246.]

*Committee on Commerce, having had under consideration a joint resolution (H. Res. 246) construing an act approved January 23, 1880, for the removal of obstructions from the harbor at the Delaware Breakwater, submitting the following report:*

By the act of January 23, 1880, the sum of \$25,000 was appropriated for the "harbor at the Delaware Breakwater and the entrance thereto and the main ship channel of the Delaware Bay and River" from the Treasury. The act was occasioned by the hulks of several vessels lying in the harbor, which had been sunk for some time and formed great impediments to the passage of vessels in that water. But the act provided that "vessels which were sunk in the year 1877" be removed, and the engineer officers in proceeding to carry out the provisions of the law have to comply with its literal provisions.

Eighty-seven other vessels have been sunk in these waters, equally dangerous by their obstruction of navigation as those of that year, and which have not been removed in order to allow that safe and untrammelled passage so essential for the maintenance of a great commercial highway; and the wrecks, lying in the harbor at the Delaware Breakwater, which have rendered it as a haven of safety for distressed mariners where they could find shelter in security from the fury of storms, destroy its protective character and render it a collection of perils to be shunned.

Consequently, that the spirit of the act of January 23 may be carried out, your committee report back the resolution, and recommend its passage by the House as amended.





MENT TO SECTION 4214 OF THE REVISED STATUTES  
RELATING TO YACHTS.

1, 1880.—Referred to the House Calendar and ordered to be printed.

END, from the Committee on Commerce, submitted the fol-  
lowing

REPORT:

[To accompany bill H. R. 4803.]

tee on Commerce, to whom was referred the bill (H. R. 4803) to  
tion 4214 of the Revised Statutes relating to yachts, have had  
under consideration, and beg leave to report:

y addressed a letter to the Secretary of the Treasury, inclos-  
of the bill for his examination, and asked his opinion as to the  
r of its passage. We submit herewith his answer, which we  
t of this report, in which he suggests some amendments,  
committee have added to the bill.

et of this bill is to reduce the charges for license and inspec-  
yachts used exclusively for purposes of pleasure. As this  
ts are very numerous, and some quite small, your committee  
son why the charges fixed in this bill should not be ample,  
t they should pay, believing that the increased number of  
er its operation will yield to the government just as much  
the present law, and relieve them from what now appears to  
e charges.

ded, your committee therefore recommend its passage.

TREASURY DEPARTMENT, March 22, 1880.

to the honor to acknowledge the receipt of your letter of the 19th instant,  
for my consideration H. R. 4803, "A bill to amend section forty-two hun-  
teen of the Revised Statutes relating to yachts."

bill differs from the existing statute proposed for repeal, chiefly in ex-  
privileges of license to yachts of less than twenty tons burden. The stat-  
uch privileges to such vessels as might be entitled to be enrolled under  
which permit enrollment in the technical sense of the statutes only to  
enty tons burden and upwards. There appears to be no sufficient reason  
striction, and in this respect I approve of the bill.

unlawful" should be stricken out, in line 19, as no licensed yacht should  
to engage in any trade whatever.

Following proposed amendment in writing attached to the first section:  
that all charges for license and inspection fees to each pleasure vessel or  
ot exceed five dollars."

**2**      **AMENDMENT TO SECTION 4214 OF REVISED STATUTES.**

**For the proposed amendment I would substitute the following: *Provided*, That all charges for license and inspection fees for any pleasure vessel or yacht shall not exceed five dollars, and for admeasurement shall not exceed ten cents per ton.**

**I would suggest this substitute for the reason that under existing statutes charges for admeasurement are more likely to be excessive than for license and inspection.**

**I return the bill herewith.**

**Very respectfully,**

**JOHN SHERMAN,**  
*Secretary.*

**Hon. AMOS TOWNSEND,**  
*Chairman Subcommittee on Commerce,  
House of Representatives.*

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## STEAMBOAT MINNIE R. CHILD.

1880.—Committed to the Committee of the Whole House and ordered to be printed.

SENATE, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 3803.]

Committee on Commerce, to whom was referred the bill (H. R. 3803) changing the Secretary of the Treasury to change the name of the steamboat Minnie R. Child, of New York, to that of St. Nicholas, submit the following report:

Owner of the Minnie R. Child, Mr. James W. Fellows, makes a sworn statement, which is attached, that he became the owner of the boat in November, 1879, and that it had been condemned on account of unsoundness of her hull. That since he has owned her he has caused her to be rebuilt by J. M. Rutan & Sons, master builders, of Tottenville, N. Y. She has been widened 4 feet; built a new hull and deck, entirely of new material; and that she has been made practically strong and seaworthy in every respect. Affidavits of Messrs. Rutan, builders, and the statement of Messrs. Wayne and John Mathews, local inspectors, are also attached, concluding by saying that "we are satisfied that the boat is as new."

The affidavit of the owner also states that for purposes of insurance the boat now rates "first class," and that she is free and clear of other incumbrance.

Under these circumstances, and relying upon the affidavits and official reports of the local inspectors, your committee recommend the passage of the bill.

NEW YORK,  
and County of New York, ss:

James W. Fellows, being duly sworn, says that he resides in the city of New York; that in the month of November, 1879, he became the owner of the steamboat Minnie R. Child, which had previously been plying as an excursion steamer in the waters of the City of New York, but had been condemned on account of the unsoundness of her hull; that since he has owned her he has caused her to be rebuilt by J. M. Rutan, master builders, of Tottenville, in this State, who widened her four feet, and built a new hull and deck almost entirely of new material, and made her practically strong and seaworthy in every particular, as appears from the affidavit of J. M. Rutan, hereto annexed, and also from the statement of Messrs. Martin and John K. Mathews, United States inspectors of steamboats, which statement is hereto annexed.

For purposes of insurance said steamboat now rates first class.

That said steamboat is free and clear of all debt or claim, and that deponent is abundantly able pecuniarily to meet any and all demand which can arise upon said boat.

That said boat is well fitted for an excursion boat, and deponent intends to charter or use her to ply in and about the harbor of New York, but that on account of her previous unsound condition, and of her having been condemned therefor, she has a bad reputation with the traveling public, which she, in her present sound and seaworthy condition, does not deserve; but which would undoubtedly follow her if she should continue under the name of Minnie R. Child. In order, therefore, to enable said boat to sustain a character to which her present condition entitles her, and to avoid the injury which her former bad reputation would inflict, deponent makes application to Congress to change her name to the "St. Nicholas."

That deponent has made diligent inquiry and has ascertained that there is no boat of the name of St. Nicholas belonging in this district, and has been able to learn of none of that name in any place, and he believes that the name is unappropriated by any boat at the present time.

Deponent further says that this application is made in good faith and with no other object than that above set forth.

JAMES W. FELLOWS.

Sworn to before me this 22d day of March, 1880.

[SEAL.]

JOHN C. HICKIE,

*Notary Public, New York County.*

STATE OF NEW YORK,  
*Village of Tottenville, Staten Island, ss:*

J. M. Rutan, being duly sworn, says that he is a member of the firm of J. M. Rutan & Son, carrying on the business of master builders at Tottenville, in this State; that he has been engaged in said business for forty-five years and thoroughly understands the same.

That his said firm was employed by James W. Fellows, of New York, the owner of the steamboat Minnie R. Child, to alter and rebuild her hull.

That said boat has been widened four feet, her hull entirely rebuilt, a new deck frame constructed and a new deck laid. That with the exception of her keel, keelsons, stern-post, and five streaks of planking, which are in a perfectly sound condition, she has been constructed entirely of the best of new materials and in a workmanlike manner, and said boat is now substantially a new boat, sound and perfectly seaworthy.

J. M. RUTAN.

Sworn to before me this 18th day of March, 1880.

[SEAL.]

RINALDER FISHER,

*Notary Public, Richmond County.*

OFFICE OF THE U. S. LOCAL INSPECTORS OF STEAM-VESSELS,  
*New York, March 12, 1880.*

J. W. FELLOWS, Esq.:

SIR: A thorough examination of the hull of steamer Minnie R. Child has been made by G. W. Wilmurt, assistant inspector of hulls, by direction of this board. He stated: "I find the hull is 4 feet 1 inch wider, being 29 feet 7 inches; the old width being 25 feet 6 inches. Has all new frame except floor timbers. Deck frame, guards, and ceiling all new. Stem and dead-wood forward new; outside planking three-fourths new. About all that is left of the original hull is the floor timbers, keel, keelsons, after dead-wood, and stern-post, all these being in a good state of preservation."

He further states that the material used is all first class, and the work done in a proper manner, and we are satisfied that the boat is as good as when new.

Very respectfully,

AUSTIN JAYNE,

JOHN K. MATHEWS,

*United States Local Inspectors, New York.*

LIGHT-HOUSE ON SQUAW ISLAND, LAKE MICHIGAN.

MARCH 31, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. TOWNSEND, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 2685.]

*The Committee on Commerce, to whom was referred the bill (H. R. 2685) providing for the erection of a light-house on Squaw Island, Lake Michigan, has had the same under consideration, and beg leave to report:*

That they referred the bill to the Light-House Board for information, and received in answer the accompanying communications, which they herewith submit as a part of their report.

It will be seen from these letters that no sufficient reason exists for the establishment of a light-house at this point, and your committee therefore report adversely and recommend that the bill do not pass, and that the committee be discharged from the further consideration of the subject.

[Inclosure.]

TREASURY DEPARTMENT,  
March 10, 1880.

SIR: Referring to bill (H. R. 2685) appropriating \$8,000 for the erection of a light-house on Squaw Island, Lake Michigan, submitted by you for the views of this Department, I have respectfully to transmit herewith a copy of a letter of the 8th instant from the engineer secretary of the Light-House Board, in which it is stated that the board is of opinion that the needs of commerce do not justify the erection of a light-house at the point named.

Very respectfully,

JOHN SHERMAN,  
Secretary.

Hon. AMOS TOWNSEND,  
Committee on Commerce, House of Representatives.

[Squaw Island, Michigan. H. R. bill 2685, for establishment of light.]

TREASURY DEPARTMENT,  
OFFICE OF THE LIGHT-HOUSE BOARD,  
Washington, March 8, 1880.

SIR: I have the honor to state that the inclosed bill (H. R. 2685) providing for the erection of a light-house on Squaw Island, Lake Michigan, was referred to the Light-

House Board March 2, 1880, by the Hon. Amos Townsend, of the Committee of Commerce of the House of Representatives, for report as to the necessity of its passage by Congress.

In reply, I beg to state that the board at its meeting on May 6, 1879, considered the matter of constructing a light-house at the locality named in this bill, and decided that the needs of commerce did not justify the establishment of a light there.

The board has recently made inquiries of the district officers as to any increase of the needs of commerce, and as to other facts bearing upon this matter, but they report no reasons why the board should change its opinion as expressed in the above-mentioned decision.

Very respectfully,

F. U. FARQUHAR,  
*Major of Engineers, Engineer Secretary.*

The Hon. SECRETARY OF THE TREASURY.

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## HARBOR OF REFUGE AT SAND BEACH, LAKE HURON, MICHIGAN.

MARCH 31, 1860.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. TOWNSEND, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 2695.]

*The Committee on Commerce, to whom was referred the bill (H. R. 2695) for the government and control of the harbor of refuge at Sand Beach, Lake Huron, Michigan, have carefully considered the same, and beg leave to report:*

That the passage of this law is urgently recommended by the Board of Engineers, and is necessary for the protection of the harbor while under construction. A copy of the correspondence on the subject between the said board and General Weitzel, resident engineer in charge of the work, is herewith submitted and made a part of this report. He says:

In conclusion, I beg most earnestly to call the attention of Congress and the Chief of Engineers to a matter which led to the correspondence of which the following is a copy:

“UNITED STATES ENGINEER OFFICE,  
“*Detroit, January 31, 1876.*

“GENERAL: I have the honor to submit herewith a draught of an act which it is imperatively necessary should be passed by Congress for the government of the Harbor of Refuge, Sand Beach, Lake Huron.

“Very respectfully, your obedient servant,

“G. WEITZEL,  
“*Major of Engineers.*

“Brig. Gen. A. A. HUMPHREYS,  
“*Chief of Engineers, U. S. A.*”

“OFFICE OF THE CHIEF OF ENGINEERS,  
“*Washington, D. C., February 10, 1876.*

“SIR: Your letter of January 31st last, submitting draught of an act for the government and control of the Harbor of Refuge on Lake Huron, at Sand Beach, Mich., has been received. While there is no doubt that the passage of the act would greatly conduce to the interests of the United States in the work of constructing and governing the Harbor of Refuge at Sand Beach, the reasons that render its passage necessary should be given. You will please, therefore, state the facts and condition of things upon which your opinion of its imperative necessity is founded, in order that the Chief of Engineers may be enabled, when called upon, to furnish such information as may be required by the committee of Congress having the matter in charge.

“By command of Brigadier-General Humphreys.

“Very respectfully, your obedient servant,

“JOHN G. PARKE,  
“*Major of Engineers.*

“Maj. G. WEITZEL,  
“*Corps of Engineers.*”

2 HARBOR OF REFUGE AT SAND BEACH, LAKE HURON, MICH.

"UNITED STATES ENGINEER OFFICE,

"*Detroit, February 12, 1876.*

"GENERAL: In reply to your letter of February 10, 1876, I have the honor to say that the necessity for the control of the Harbor of Refuge at Sand Beach, Mich., by the government is shown by the experience of the past season, during which boats and vessels persistently crowded together and made fast to the breakwater in such a manner as to interfere with the work of construction and the use of the harbor by other craft. Rafts entered the harbor to the imminent risk of vessels at anchor, in one case compelling a vessel to slip her cables and leave the harbor during a gale. Steam-cranes persistently deposited cinders and other refuse inside the harbor. The increasing use of the harbor will aggravate these evils unless stopped by government control. In general, a control of the government is necessary to protect the work and the craft using the harbor.

"I am, general, very respectfully, your obedient servant,

"G. WEITZEL,

"*Major of Engineers.*

"Brig. Gen. A. A. HUMPHREYS,

"*Chief of Engineers, U. S. A.*"

I am not aware that any harbor exists anywhere which is much used by vessels that has not a master to regulate the vessels when they use it. Now, if this is necessary at places where everything comes along and takes position in some order and regularity, how much more imperative is it here, where vessels of all classes and kinds and rafts, also, enter pell-mell, and are suddenly transferred from a rough sea to smooth water.

It is an imperative necessity that a harbor-master, with full power, be appointed here, if the work shall serve the purposes fully for which it was designed.

I know that there are many vessels now whose masters risk their chances in a storm rather than the risk of being damaged by collision in the harbor.

We recognize the necessity for this law, and fully indorse and recommend the passage of the bill.

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## REBUILDING THE LIGHT-HOUSE AT EAGLE RIVER, LAKE SUPERIOR.

1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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SENT, from the Committee on Commerce, submitted the following

### REPORT :

[To accompany bill H. R. 2686.]

*Committee on Commerce, to whom was referred the bill (H. R. 2686) for rebuilding the light-house at Eagle River, Lake Superior, have had the bill under consideration, and beg leave to report :*

They addressed a letter to the Secretary of the Treasury, inclosing the bill requesting his opinion thereon. We submit herewith, accompanied by a communication from the Light-House Board, in which it appears that they do not recommend the rebuilding of the light-house, but that the light should be placed on the end of the pier-head light; that that pier is private property, and special authority is required to empower the board to place it thereon; that if it would have been rebuilt from the annual appropriations of 1870.

The committee therefore recommend that steps be taken immediately to obtain the consent of the owners of the pier for the erection of this light, and that, when such consent has been given and placed on record, the Secretary of the Treasury be authorized to erect such light from the annual appropriations for such purposes.

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[Inclosure.]

TREASURY DEPARTMENT,  
March 11, 1880.

Referring to the bill (H. R. 2686) appropriating \$10,000 for rebuilding the light-house at Eagle River, Lake Superior, Michigan, submitted by you for the views of the committee, I have respectfully to transmit herewith a copy of a letter of the 8th inst. from the engineer-secretary of the Light-House Board, in which it is stated that the light referred to would have been rebuilt before this, but for the fact that its location would be changed to the end of the pier, &c.

As the said pier is private property, the board suggests the form of a proviso to be inserted in the bill submitted by you, authorizing the lease of so much of the pier as may be required for the establishment of a pier-head light.

I am, respectfully,

JOHN SHERMAN,  
*Secretary.*

OSCAR TOWNSEND, M. C.,  
*Committee on Commerce, House of Representatives.*

## 2 REBUILDING LIGHT-HOUSE AT EAGLE RIVER, LAKE SUPERIOR.

[Eagle River, Michigan. H. R. bill 2686, for rebuilding light-house.]

TREASURY DEPARTMENT,  
OFFICE OF THE LIGHT-HOUSE BOARD,  
Washington, March 8, 1880.

SIR: I have the honor to state that the inclosed bill (H. R. 2686) providing for the rebuilding of the light-house at Eagle River, Lake Superior, Michigan, was referred to the Light-House Board March 2, 1880, by the Hon. Amos Townsend, M. C., of the Committee on Commerce, of the House of Representatives, for report as to the necessity of its passage by Congress.

In reply I beg to state that the Eagle River light station has been in a dilapidated condition for some time, and would have been rebuilt from the annual appropriations, but for the fact that it is of but little use in its present location.

This light should be placed on the end of the pier, as a pier-head light, but the pier is private property, and special legislation is required to empower the board to place it thereon.

It is respectfully suggested that, should it be determined to rebuild this light station, a proviso be put in the bill, as follows:

"*Provided*, That the provisions of section 353 and 4661 of the United States Revised Statutes shall not be applicable to this structure, so far as title to the site thereof, and cession of jurisdiction thereover are involved; and provided also, that the Light-House Board is empowered to establish a light on the pier at the mouth of Eagle River, Michigan, and to lease as much of the pier as may be necessary for said purpose."

Very respectfully,

F. U. FARQUHAR,  
*Major of Engineers, Engineer Secretary.*

The Hon. SECRETARY OF THE TREASURY.

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PORT OF ENTRY AT SAINT VINCENT, MINN.

MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

MR. TOWNSEND, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 4249.]

*The Committee on Commerce, to whom was referred the bill (H. R. 4249) to make Saint Vincent, in the State of Minnesota, a port of entry, in lieu of Pembina, in the Territory of Dakota, have had the same under consideration, and submit the following report:*

That Pembina, the present port of entry, is located on the westerly side of the Red River of the North, and near the international boundary line: that at the time of its location and establishment as a port of entry the commerce of the United States and the province of Manitoba was done almost exclusively by steamboat navigation on the Red River of the North, and hence it made little difference on which side of the river the custom-house or port was located. But in the year 1879 the Saint Paul, Minneapolis and Manitoba Railway was completed to the Manitoba boundary line, and the same year the Canadian Pacific Railway was completed from a point of intersection at the boundary line to the city of Winnipeg, Manitoba, making a continuous railway line from the cities of Saint Paul, Minneapolis, and Duluth to Winnipeg and other points in the province of Manitoba. This railway line is located on the easterly side of the Red River of the North, with a station at the village of Saint Vincent, and some distance from the old site of Pembina. Since the completion of this line of railway the commerce between the United States and Manitoba is largely, and during six months of the year exclusively, done by rail, and the location of the port on the other side of the river occasions great and unnecessary inconvenience. While Saint Vincent, as a port of entry, will so much better accommodate all the vast business done by rail, it will accommodate equally well that done by the river.

Your committee are advised, also, that the old custom-house building located at Pembina was destroyed by fire several months since, and that as good or better accommodations for the transaction of the business of the office and security of the valuable papers connected therewith can be had at Saint Vincent.

The Secretary of the Treasury, to whom your committee addressed a communication on this subject, replies that "the department knows of no objection to the passage of the bill."

In view of all the facts above set forth, your committee would recommend the passage of this bill.

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## LIGHT-HOUSE AT MANISTIQUE, MICH.

1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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SENT, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 3528.]

Committee on Commerce, to whom was referred the bill (H. R. 3528) for the establishment of a light-house at Manistique, Mich., have had the bill under consideration, and beg leave to report:

The committee addressed a communication to the Light-House Board asking information on the subject, and received in answer the accompanying communications, in which it is stated that no necessity exists for the establishment of a light at that point.

The committee, therefore, make an adverse report on the same, and recommend that the bill do not pass.

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TREASURY DEPARTMENT, *March 4, 1880.*

In reply to your letter of the 12th ultimo, inclosing for the views of this department on the bill H. R. 3528, appropriating \$20,000 for the construction of a light-house at Manistique, Mich., I have the honor to transmit herewith a copy of a letter of the Light-House Board, in which it is stated that the necessities of commerce do not require the establishment of a light at the point above named.

Respectfully,

JOHN B. HAWLEY,  
*Acting Secretary.*

AMOS TOWNSEND, M. C.,  
Committee on Commerce, House of Representatives.

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[Manistique, Mich. Bill H. R. 3528. Necessity for light.]

TREASURY DEPARTMENT,  
OFFICE OF THE LIGHT-HOUSE BOARD,  
*Washington, March 2, 1880.*

I have the honor to transmit the bill (H. R. 3528) for the construction of a light-house at Manistique, Mich., referred to this office, for the views of the Light-House Board thereon, by the Hon. Amos Townsend, M. C., of the Committee on Commerce of the House of Representatives, whose letter of transmittal is also inclosed. The bill, together with other papers bearing on the matter, was considered by the Board at its meeting on March 1, when the conclusion was reached that the necessities of commerce do not demand the establishment of a light at Manistique, Mich. The Board, therefore, cannot recommend that a light be established as proposed by the bill.

Respectfully,

F. U. FARQUHAR,  
*Major of Engineers, Engineer Secretary.*

SECRETARY OF THE TREASURY.

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## PORT OF DELIVERY AT PORTSMOUTH, OHIO.

MARCH 31, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. TOWNSEND, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 559.]

*The Committee on Commerce, to whom was referred the bill (H. R. 559) to provide that the city of Portsmouth be made a port of delivery, submit the following report:*

The city of Portsmouth is the largest and most enterprising city on the Ohio River between Cincinnati and Wheeling. It is the center of the wholesale trade of Southern Ohio and Eastern Kentucky, as it is the center of the iron business of what is known as the Hanging Rock iron region; one of the most important regions for the manufacture of pig-iron in the United States. It possesses unusual facilities for the transportation of its trade, both by river and rail, being the terminus of three railroads, and also of several river lines of steamers. The Chief of Customs and the Secretary of the Treasury both recommend the establishment of a port of delivery at that city.

Your committee therefore recommend the passage of the bill with the following amendment: "*Provided*, That the salary of the collector shall not exceed the net fees collected according to law at said port."

The adoption of this amendment will prevent the establishment of the port of delivery from entailing any expense upon the government.





## STEAM-TUG CHARLOTTE AND ISABELLA.

MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. WAIT, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 4450.]

*The Committee on Commerce, to whom was referred the bill (H. R. 4450) changing the name of the steam-tug Charlotte and Isabella to Maud, beg leave to report:*

That they have had said bill under consideration and find the following facts:

That said steam-tug was recently purchased by Shortland & Brother, of the port and city of New York, of parties at Providence, in the State of Rhode Island, and is now employed in towing vessels in and out of the harbor of the City of New York; that in making out bills for the use of said steam-tug, in making entries with regard to her on their books of account, and in their correspondence, the present owners are embarrassed by the length of name originally given to her, and that it would be of great convenience to them if the present name, Charlotte and Isabella, could be changed to that of Maud, and that this steam-tug might hereafter be documented and known by the latter name.

Your committee would further state that, from evidence before them, they are satisfied that the steam-tug is not in debt, that she is now being thoroughly repaired, and that the change of name is sought as a matter of business convenience only. The letter from the Secretary of the Treasury, and that of the Hon. S. B. Chittenden, which accompany this report, show that the Treasury Department make no objection to this change of name.

Your committee, for the several reasons named, would recommend the passage of the bill referred to them.

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TREASURY DEPARTMENT, February 28, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 27th instant, inclosing the bill (H. R. 4450) to change the name of the steam-tug Charlotte and Isabella to Maud.

It appears that the bill was placed in your hands by the chairman, as a subcommittee, to submit to the department, with a request to be informed if it knew of any reason why the bill should not be passed, and the legislation asked for acquiesced in. The vessel was purchased in Providence by the present owners, S. F. Shortland & Brother, of the port of New York; and you state that the grounds of their request to

change her name are the very long name she now bears, which embarrasses them in making out bills, keeping accounts, &c. ; that there are no liens on the tug for debts, as you understand; and that she is now being thoroughly repaired.

I have to inform you, in reply, that the records of the Register of the Treasury show that the tug was built in New Jersey, in 1862, and was last documented at Providence, R. I., February 1, 1878; and that the change of her home port was not known to that office.

As a general rule, the department holds that a vessel should be held to the reputation she has already acquired. But no valid objection exists to a change of name, if the change be not made to elude creditors, or if a vessel shall not have become unseaworthy through age or injury to her structure. Upon these points the department has no information in regard to this tug.

Very respectfully,

JOHN SHERMAN, *Secretary.*

Hon. JOHN T. WAIT,

*Subcommittee Committee on Commerce House of Representatives.*

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HOUSE OF REPRESENTATIVES,  
*Washington, D. C., February 27, 1880.*

DEAR SIR: In respect to the inclosed bill for a change of the name of the steam-tug Charlotte and Isabella, which I understand is referred to you, permit me to say that the owners are my constituents and highly respectable. The vessel is not in debt, is being put in first rate order, and the change of name is sought as a matter of business convenience only.

I have inquired of James A. Dumont, the supervising inspector of steam vessels of Treasury Department, who says there is *no objection to the change.*

Very respectfully, yours,

S. B. CHITTENDEN.

Hon. JOHN T. WAIT,

*Chairman Subcommittee, &c.*

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SCHOONER J. H. DUSENBERRY.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. WAIT, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 2208.]

*The Committee on Commerce, to whom was referred the bill (H. R. 2208) changing the name of the schooner J. H. Dusenberry to Cordorus, beg leave to report:*

That they have had said bill under consideration, and find the following facts: That said schooner is a small sailing yacht, which the present owner, Mr. C. Ross Grubb, of Burlington, in the State of New Jersey, keeps for his personal use as a pleasure boat; that the said schooner was formerly the property of Mr. John H. Dusenberry, after whom she was originally named; that both the present and former owners are desirous that the name of said schooner be changed to Cordorus, as shorter, and, by the change of ownership, more appropriate; that there are no claims for debts or liens of any kind existing against said vessel, and, so far as your committee can learn, there is no objection on the part of any person to the proposed change.

Your committee, for the several reasons aforesaid, would recommend the passage of the bill referred to them.



## STAMFORD HARBOR, CONN.

MARCH 31, 1880.—Committee on Commerce discharged and referred to the Committee on Appropriations.

Mr. WAIT, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 5535.]

*The Committee on Commerce, to whom was referred a petition for the improvement of Stamford Harbor, in the State of Connecticut, having had the same under consideration, beg leave to report:*

That a large number of steam and sailing vessels are constantly passing in and out of the harbor at Stamford, engaged in the transportation of passengers and merchandise; that many transient vessels visit the harbor to bring lumber, coal, and other cargoes for delivery at the port of Stamford; that the approaches to the harbor are rocky and very dangerous, and such transient vessels are especially liable to run upon the ledges at the entrance of the harbor, and be injured if not wrecked.

Your committee would further state that certain resolutions of the general assembly of the State of Connecticut, and a petition of citizens of that State, requesting the erection of beacons in the harbor of Stamford, were referred to the Light-House Board, asking its views on the same; that said board, in reply, stated that, after carefully considering the matter, it believed that the interests of commerce required the establishment of a stone pier, surmounted by an iron cage, to act as a day-mark on the southeast end of the harbor ledge, and of a small light on what is known as Forked Rock, at the southern end of the shoal making out from Shippen Point, on the opposite side of the channel, and about 800 yards from the proposed dumb beacon. And your committee would state that said Light-House Board further recommended that Congress make an appropriation of \$5,000 for the establishment of a day-mark on Harbor Ledge, and of \$7,000 for the establishment of a light on Forked Rock, in the harbor of Stamford, Conn., and that the Secretary of the Treasury concurred in this recommendation. The letters of the Secretary of the Treasury and the chairman of the Light-House Board, and other papers relating to this matter, are submitted with this report.

The committee would respectfully recommend the passage of the accompanying bill.

## STAMFORD HARBOR, CONN.

[Stamford Harbor, Conn. Establishment of beacons.]

TREASURY DEPARTMENT,  
OFFICE OF THE LIGHT-HOUSE BOARD,  
*Washington, January 30, 1880.*

DEAR SIR: In compliance with your verbal request of this date, I have the honor to inclose a copy of the board's letter of June 6, 1878, to the honorable the Secretary of the Treasury, suggesting that Congress be asked to make an appropriation of \$5,000 for the establishment of a day-mark on Harbor Ledge, and of \$7,000 for the establishment of a light on Forked Rock, in Stamford Harbor, Connecticut.

The letter addressed to you on this subject by Messrs. Baker & Warren, together with its inclosure, is herewith returned.

Very respectfully,

GEO. DEWEY,  
*Commander, U. S. N., Naval Secretary.*

HON. FREDERICK MILES, M. C.,  
*House of Representatives, Washington, D. C.*



[Stamford Harbor, Conn. Beacon and light requested.]

TREASURY DEPARTMENT,  
OFFICE OF THE LIGHT-HOUSE BOARD,  
*Washington, June 6, 1878.*

SIR: I have the honor to acknowledge the receipt of department letter of April 30, 1878, inclosing resolutions of the general assembly of the State of Connecticut, and a petition of citizens of that State, requesting the erection of beacons in the harbor of Stamford, and asking thereon the views of the Light-House Board.

In reply, I beg leave to say that the board, after carefully considering the matter, believe that the interests of commerce require the establishment of a stone pier, surmounted by an iron cage, to act as a day-mark on the southeast end of Harbor Ledge, and of a small light on what is known as Forked Rock, at the southern end of the shoal making out from Shippen Point, on the opposite side of the channel, and about eight hundred yards from the proposed dumb beacon.

For this purpose it is suggested that Congress be asked to make an appropriation of \$5,000 for the establishment of a day-mark on Harbor Ledge, and of \$7,000 for the establishment of a light on Forked Rock, in Stamford Harbor, Connecticut.

The papers transmitted to the board are herewith returned.

Very respectfully,

JOHN RODGERS,  
*Chairman.*

The Hon. the SECRETARY OF THE TREASURY.

OFFICE OF BAXTER WRECKING COMPANY,  
308 West street, New York, January 27, 1880.

*Editor of the Stamford Herald, Stamford, Conn. :*

SIR: We are decidedly of the opinion that government ought to erect a light-house at the entrance to Stamford Harbor, for the approaches to it are rocky and very dangerous. In entering the harbor as it now is, the master of a transient vessel requires the aid of a good local pilot to insure his property from disaster. About one year ago, in going out of that harbor, the captain of our wrecking and fire steamer, John Fuller, missed his calculation, owing to the fact that one of the buoys had been carried away by the ice, and our steamer struck on the rocks on the outer ledge and sunk, barely escaping total shipwreck, and causing a loss to us of several thousand dollars.

Very respectfully, yours,

BAXTER WRECKING COMPANY.

## THE UNLOADING OF FOREIGN VESSELS.

MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. WAIT, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany H. Res. 3.]

*The Committee on Commerce, to whom was referred the joint resolution (H. Res. 3) relating to the unloading of foreign vessels, beg leave to report:*

That they have had said resolution under consideration, and also certain correspondence and other evidence brought before them, and find the following facts:

That by section 2771 of the Revised Statutes, being an act of Congress passed in 1799, it was provided that vessels which are not vessels of the United States shall be admitted to unload only at ports of entry established by law.

Your committee presume that the object aimed at by that legislation was to confine the coastwise carrying trade of foreign cargoes to American vessels. Though this law, in its operation, may as a general rule be beneficial to American commerce, yet there are many cases in which it works great hardship to American citizens who are importers of foreign products. In cases where the American merchant imports his goods in a foreign bottom, he being unable at the time to obtain the service of an American vessel in which to import the same, and the port of entry, though in the same collection district, is some miles distant from the port of delivery, he is compelled to unload his cargo at the former port and to transport the same to the latter by lighters, or perhaps by railroad conveyance, and so is subjected to expenses which are unnecessary, burdensome, and unjust. The resolution reported by your committee so alters section 2771 of the Revised Statutes of the United States as to allow any vessel not of the United States to unload at any port of delivery in a customs-collection district after the due entry of said vessel and cargo at a port of entry in the same district.

Your committee would respectfully recommend the passage of the accompanying resolution.





## SHEER-BOOMS IN THE MISSISSIPPI RIVER.

March 31, 1880.—Referred to the House Calendar and ordered to be printed.

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PERSON, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 4591.]

*Committee on Commerce, to whom was referred the bill H. R. 4591, be-  
act to authorize the Mississippi River Logging Company to con-  
and operate sheer-booms in the Mississippi River, at or near  
stone, or Straight Slough, having had the same under consideration,*

The Mississippi River Logging Company is a corporation organ-  
er the laws of the State of Iowa, and owns a boom situated in  
ugh for storing and rafting logs; that said company operates  
boom under a charter granted by the legislature of the State of  
n; that the logs handled by said company float down the Chip-  
ver from the premises bordering the headwaters of that stream;  
operations of that company are on a large scale, and last year  
pany passed through its boom upwards of two hundred and  
ons feet of pine logs; that on the passage of said logs down  
pewa River they are deflected from that stream into Beef Slough  
er-boom that said company operates under the provisions of  
er, and that it is necessary to sheer the logs from a natural  
own the Chippewa River into Beef Slough; that said boom is  
to be opened for the passage of all rafts down the stream, and  
passage of boats to and fro; that when the boom is open and  
running they pass by the head of Beef Slough and down the  
a River into the Mississippi River.

Also, in the operation of rafting and sluicing logs near the mouth  
ough numerous logs escape and run into the Mississippi River;  
withstanding the vigilance of said company several million  
logs annually escape and float into the Mississippi River, and  
r lost or, if recovered, involve a large expense; that about fif-  
s below the mouth of Beef Slough is the head of Rollingstone,  
ht Slough; that said slough empties its waters again into the  
pi River about seven miles below its head, and during high  
s capable of storing all the logs that are likely to escape from  
ugh, and that said logs can be made into rafts near the mouth  
ough and floated to their destination.

aid Rollingstone, or Straight Slough, is the nearest point below  
h of Beef Slough where the escaped logs can be secured; that  
ed States have constructed two dams immediately above the  
Rollingstone, or Straight Slough, to deflect, during low water,

the water which would naturally run into said slough to the left, and into the main channel of the Mississippi River, to improve the navigation of said river.

That these dams have destroyed the navigability of said Rollingstone, or Straight Slough, in times of low water for general navigation, by using its waters to improve the main channel of the river, yet for the purpose contemplated by this bill, where its use is only required during high water, it is adequate and well adapted for storing logs.

That the Mississippi River at the point where authority is asked to construct sheer-booms is broad, and that, in the opinion of your committee, such booms may be constructed to accomplish the object contemplated by this bill and so used as not to obstruct navigation in any manner whatever. Even, however, was this doubtful, the unobstructed navigation is secured by the provision of the bill which requires that the plan of these improvements shall be approved by the Secretary of War and the Chief of Engineers before they are constructed, and that after their construction, if their operations hinder navigation, they shall be removed or modified under their direction, but at the cost of the parties erecting them. The interests to be protected by this bill are of very considerable magnitude. The logging and lumber business on the Upper Mississippi and its tributaries constitute one of the largest branches of commerce in this region. Its extensive pine forests yield products which burden every navigable stream on their way to market.

The transportation of logs on this large scale is necessarily attended with exposures which tempt to ready depredations upon this kind of property, and the State legislatures have been appreciative of these difficulties and the importance of the interests to be guarded, and they have been very liberal in granting boom charters and proper privileges to corporations and individuals in order to facilitate, cheapen, and secure the commerce in this great staple. But the State legislation is incompetent to confer the benefits here sought, and which can only be secured by the power of Congress.

The great navigable highway lies between two States, neither of which has control of the interests involved, and in passing this bill the general government will but continue and extend the equitable policy which the local legislatures, within their appropriate sphere, have ever been ready to carry out.

The committee therefore report the bill back with the following amendments, to wit:

After the word "approval," in the thirteenth line, insert the following words, *and that of the Chief of Engineers of the United States Army*; and add the following section:

SEC. 3. This act may be altered, amended, or repealed at any time, and in case of such alteration, amendment, or repeal it is expressly provided that the United States shall not be liable for any damages that may be sustained by reason thereof.

## THE BARK ANNIE JOHNSON.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HENDERSON, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 4162.]

*The Committee on Commerce, to whom was referred House bill No. 4162, having considered the same, submit the following report of the facts as they find them:*

From the affidavits and other evidence referred to the committee, it appears that the British iron ship *Ada Iredale*, sailed from England in the latter part of 1876, with a cargo of coal, bound for San Francisco. After passing Cape Horn, and while in the South Pacific Ocean, the coal took fire, and all hands were compelled to abandon the vessel, which, after being abandoned, drifted for some months until she was sighted near Tahiti, and towed into the port of Paperte on the 8th of June, 1877, with the cargo still on fire. On the 8th of January, 1878, her hull was sold at auction to Messrs. Crawford & Thayer, American citizens. At the time of sale the vessel was found to be in the following condition:

Two to three hundred tons of ashes mixed with coal were found on board still burning. Her upper and lower decks were either broken or twisted; hercapstans, windlass, pumps, rudder-gear, shroud-chains, and stanchions were all broken or badly damaged; the three masts fallen and broken off even with the deck, and nothing remaining of them but the mainmast hanging alongside of her with a part of the main yard, and also the bowsprit, which was still in place, but the whole much damaged. The fore and mizzen masts were completely gone, and the three upper rows of sheet-iron entirely warped. Of the whole vessel the timbers and lower plates only were intact.

About the month of May, 1878, the purchasers commenced repairing her. All the material required for the reconstruction of the vessel had to be and was purchased in San Francisco and taken to Tahiti, and all the skilled labor employed in the reconstruction of said vessel was sent from the same port.

The vessel being now finished, the purchasers and owners seek to obtain an American register for the vessel, but are not able to do so, from the fact that section 4136 of the Revised Statutes do not authorize the Secretary of the Treasury to issue a register or enrollment for any vessel reconstructed under such circumstances, unless the same shall be

wrecked in the United States. That section of the Revised Statutes of the United States (4136) provides as follows:

The Secretary of the Treasury may issue a register or enrollment for any vessel built in a foreign country whenever such vessel shall be wrecked in the United States, and shall be purchased and repaired by a citizen of the United States, if it shall be proved to the satisfaction of the Secretary that the repairs put upon such vessel are equal to three-fourths of the cost of the vessel when so repaired.

It is shown by the evidence that the hull in this case was sold for \$200, and that the repairs which have been put upon the vessel in her reconstruction amount to more than \$45,000, of which over \$40,000 were paid for materials purchased in the United States, and for labor furnished by American mechanics, both the men and material having been sent from San Francisco to Tahiti in American bottoms.

Notwithstanding the said bark was not wrecked in the United States, yet as she was purchased by an American citizen and reconstructed so largely by labor and material furnished from the United States, your committee are of the opinion that the case comes within the spirit of the statute referred to, and that the Secretary of the Treasury should be authorized to issue a register to said vessel under her new name, the Annie Johnson. The committee therefore report said bill back, and recommend the passage of the same.

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TRANSFER OF BEDLOE'S ISLAND, NEW YORK HARBOR,  
FOR MARINE HOSPITAL PURPOSES.

MARCH 31, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, from the Committee on Commerce, submitted the following

REPORT:

[To accompany H. Res. 165.]

*The Committee on Commerce, to whom was referred H. Res. 165, being a joint resolution as to the transfer of a part of Bedloe's Island, New York Harbor, for marine-hospital purposes, beg leave to report:*

That they have had said resolution under consideration and find that said island was evacuated in April, 1877, by the troops which had been stationed there up to that time, and it was then proposed to utilize the buildings on said island for marine-hospital purposes, in order that the property, the value of which was great, might not be idle or suffer from want of proper care and preservation, and that the great need of proper marine-hospital facilities might at the same time be met. The site, as shown by the Army records, is exceedingly healthful, and it is more conveniently located than any other that is available in or near the New York Harbor. For ten years past the annual reports of the Secretary of the Treasury have contained from year to year the recommendation that a marine hospital should be established at the port of New York, and the sum necessary to carry out this proposition has been estimated at \$250,000. The Secretary of the Treasury some time since requested the Secretary of War to transfer the island, with its buildings, to the Treasury Department, to be occupied by the Marine-Hospital Service if no longer required for the use of the Army, and in July last a transfer was made accordingly; this transfer was, however, a conditional one, subject to recall by the Secretary of War, should the island in his opinion be again needed by the War Department, and was also subject to the joint resolution of Congress of March 3, 1877, designating Bedloe's Island as the site for the proposed colossal statue of "Liberty Enlightening the World." The only practical site on the island where the statue can be placed is at one end, the front and highest portion of the island, occupied by Fort Wood. The placing of the statue at that point would not in any manner interfere with the use of that portion of the island, which is outside and in the rear of the fort, for marine-hospital purposes. The object of this resolution is to provide that the island shall continue to be used for marine-hospital purposes and for the benefit of seamen until such time as military necessity may demand that it be surrendered to the War Department. Manifestly the sick seamen should be cared for in hospitals maintained exclusively for their use, at all ports where their

number is large enough to warrant it. This policy has been earnestly advocated by all who have specially investigated the operations of the Marine-Hospital Service, among whom was Dr. George B. Loring, of Massachusetts, now a member of this House; and in the act of June 10, 1872, Congress inserted a clause forbidding the use of any portion of the marine-hospital fund for the support of any sick or disabled seamen by contract at the lowest bid, except the proper care and treatment of the patients were secured; the contract system, the "farming out" of the patients to the lowest bidder, has been discontinued to the greatest extent practicable with the means at hand, but Congress should give all reasonable aid toward the total abolition of that system wherever possible by providing proper sites and buildings for the establishment of such hospitals as are necessary to accommodate the patients. The Surgeon-General of the Marine-Hospital Service in his report for 1877 calls attention to the remarkable fact that while marine hospitals have in the past years been erected at many places where no such buildings were at any time required, there has never been anything done for the establishment of a hospital at the largest commercial port in the country, where one-tenth of the entire number of patients of the marine hospital are centered. During the year ending June 30, 1879, 2,323 patients were treated by that service at New York, and from that time until February 1, 1880, the number of patients was nearly 1,800. Believing said island to be in every way a suitable place for a marine hospital, and that there is ample room for the same without interfering with the statue aforesaid, the committee report said resolution back to the House and recommend the passage of the same, with the following amendment: Insert after the word "hospital," in the sixth line of said resolution, the words "during time of peace."

## PORT OF DELIVERY AT INDIANAPOLIS.

31, 1880.—Referred to the House Calendar and ordered to be printed.

PERSON, from the Committee on Commerce, submitted the following

### REPORT:

[To accompany bill H. R. 3520.]

Committee on Commerce, to whom was referred the bill (*H. R. 3520*) to  
a port of delivery at Indianapolis, in the State of Indiana, re-  
sult report:

They have considered said bill, and are of the opinion that the  
bill should pass with an amendment.

That the city of Indianapolis is an inland city, and that here-  
tofore has been the custom to establish ports of delivery only upon  
navigable waters. But that custom obtained at a time when we had  
no facilities for inland transportation by rail, which we now pos-  
sess. The committee can see no good reason why, with the changed  
conditions of the country and the means of rapid inland transportation  
of large cities like the city of Indianapolis, which is a great rail-  
road center and has more than 100,000 inhabitants, should not be made  
a port of delivery, as well as some town or city of far less commercial  
importance which happens to be situated on some navigable stream.

The bill was submitted to the Secretary of the Treasury for his opinion  
on the propriety of passing the same, and the following communica-  
tion is made part of this report, was received in reply:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,  
Washington, D. C., February 19, 1880.

I have received your letter of the 16th instant, inclosing a copy of the bill (*H. R. 3520*) to establish a port of delivery at Indianapolis, Ind., and requesting my views on the propriety of its passage.

I have to state that the policy of the government seems to have been, heretofore, to establish ports of delivery only at points upon navigable waters of the United States. The most of the legislation on this subject was had at a period when dutiable goods could only be transported by means of vessels on such navigable waters.

Since so established, with the exception of some which were made interior ports of delivery by what is known as the immediate transportation act of 1870, embraced in the Revised Statutes, have become of little importance, and have been discontinued by the Secretary of the Treasury, in pursuance of authority conferred on him by section 253, Revised Statutes.

In my annual report of 1878 I recommended that authority be given to the Secretary of the Treasury to consolidate districts and abolish ports of entry in cases where the revenue derived does not amount to \$10,000 per annum. At the time of the creation of the collection districts and ports of entry the present system of importation of goods and of rapid railroad transportation of imported goods to interior ports was not in existence.

The influence of the establishment of great steamship lines between the large sea-ports and foreign ports, and the increased and improved means of rapid trans-

portation inland by rail, the business of importing foreign goods is now principally centered at Boston, New York, Philadelphia, Baltimore, New Orleans, and San Francisco.

At many places on the seaboard, which once possessed considerable foreign trade, no importations have been made for years, and no reason exists for their continuance as ports of entry.

It is, therefore, a question worthy of the careful consideration of Congress whether the Secretary of the Treasury should not be clothed with power to establish as ports of delivery, under the immediate transportation act, important interior cities of not less than 50,000 inhabitants, having direct and unbroken rail connection with the seaboard ports, and to discontinue as ports those places on the seaboard which are no longer of commercial importance, but at which, under the law, collectors and other officers of the customs are required to be stationed.

Such arrangement would give flexibility to the customs service and enable the Treasury Department to make such changes from time to time as might seem to be required by the course of trade and commerce without increasing the aggregate cost of collecting the revenue.

If the creation of new ports is not coupled with authority to abolish those already established, at which little or no business is transacted, the expenses of collection will be largely increased without adding to the aggregate receipts from customs, which in any event must be collected either at the port of importation or delivery.

Very respectfully,

JOHN SHERMAN,  
*Secretary.*

Hon. THOMAS J. HENDERSON,  
*House of Representatives.*

While the Secretary does not in this letter expressly recommend the passage of this bill, still he certainly does not oppose its passage. And, from the letter, your committee are of the opinion that it can be fairly inferred that there is no valid objection to making the city of Indianapolis a port of delivery.

Your committee refer the House to the following statement showing the importers of Indianapolis, the amount of imports direct, the amount of imports indirect, and the prospective amount of imports as stated by the importers themselves, and make the same a part of this report:

INDIANAPOLIS, IND., March 11, 1890.

*To the honorable Board of Trade, Indianapolis, Ind.:*

We, the undersigned, your committee, do respectfully present to your honorable body the within report of statistics, showing as far as possible the present amounts in value of imports, both direct and indirect, to Indianapolis; also, in prospective, should this city be made a port of delivery.

In submitting this report your committee are requested to call your attention to the fact that direct importations would be a saving to our merchants of from 5 to 10 per cent., which would add largely to the present direct importations.

Yours, respectfully,

CHARLES E. REESE.  
A. BURDSAL.  
CHARLES MAYER.

Hon. THOMAS J. HENDERSON,  
*House of Representatives.*



# PORT OF DELIVERY AT INDIANAPOLIS.

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*Value of import trade of Indianapolis, Ind., for the year 1879*

Names of importers.	Articles.	Direct.	Indirect.	Prospective.
Albert Gall.....	Carpets.....		\$25,000	\$30,000
Merrill Hubbard & Co.....	Stationery.....		5,000	10,000
Browning & Sloan.....	Drugs.....		50,000	50,000
Pettis Sons & Co.....	Dry goods.....		100,000	150,000
Charles F. Meyers.....	Cigars.....		5,000	10,000
Charles Soehner.....	Music.....		5,000	10,000
Eddy & West.....	Gentlemen's furnishings.....		5,000	10,000
Stewart & Barry.....	Drugs.....	\$5,000	45,000	50,000
Cathcart & Cleland.....	Books and stationery.....		8,000	10,000
Tolan Brothers.....	do.....		10,000	15,000
Rivet & Partridge.....	Dry goods.....		30,000	40,000
William Haroll.....	Fancy dry goods.....	10,000	30,000	50,000
W. A. Spades.....	Dry goods.....	10,000	25,000	40,000
Esch Baylor & Co.....	do.....		30,000	40,000
Brown, Stewart & Co.....	do.....	4,000	15,000	25,000
Henry Schwinge.....				
John Grosch.....	Mineral waters.....	1,000	2,000	3,000
L. S. Ayres & Co.....	Dry goods.....	25,000	100,000	175,000
Kingan & Co., per H. S. Sinclair.....	Salt.....		60,000	60,000
P. O. Donnell.....	Linens.....		20,000	
John & J. A. Tarlton.....				3,000
Hollweg & Reese.....	Queensware.....	50,000	5,000	60,000
A. Burdall.....	Paints, oils, and glass.....		3,000	20,000
H. Frommeyer.....	Queensware.....		5,000	5,000
George K. Shaw & Co.....	Saddlery and carriage hardware.....		5,000	
P. M. Capen.....	Liquors and cigars.....		10,000	
Haason, Van Camp & Co.....	Hardware.....		10,000	20,000
Daggett & Co.....	Fruits.....			25,000
L. Ladorff.....	Notions.....			20,000
Gordon, Kurts & Co.....	Saddlery hardware.....		10,000	25,000
Lewis Desaut.....			20,000	
Shelley & McCrea.....	Millinery.....		25,000	
Berman Rikhoff.....	Liquors.....			10,000
Miloney & Hayes.....	do.....			10,000
Fau & Ward.....	do.....			20,000
James, Sullivan & Talbott.....	Tin-plate metals.....			60,000
Evans, Cornelius & Co.....	Wholesale dry goods.....			100,000
Ribben, Pattison & Co.....	do.....	10,000	50,000	100,000
Johnston & Erwin.....	do.....	15,000	75,000	150,000
A. L. Wright & Co.....	Carpets.....			20,000
Kapp Brothers.....	Notions.....			25,000
Morris & Jones.....	Queensware.....		10,000	15,000
Hildebrand & Fugate.....	Hardware.....	10,000	15,000	
Portner, Floyd & Co.....	Notions.....		10,000	25,000
Raymond, Carey & Co.....	Hardware.....		15,000	30,000
H. Luber & Co.....	French plate.....	1,000	10,000	15,000
C. Schrader & Brothers.....	China.....	1,000	8,000	10,000
Charles Mayer & Co.....	Toys, notions, and fancy goods.....	30,000	20,000	40,000
A. Marten & Co.....	Hardware.....		5,000	10,000
William B. Burford.....	Stationery.....		5,000	10,000
Egan & Treat.....		2,500	15,000	7,500
J. C. Ferguson & Co.....		1,000	20,000	
Totals.....		175,500	801,000	1,618,500

No groceries, as coffee, sugars, or teas are included in above figures.

The committee report the bill back with the following amendment: Insert at the close of the bill the following words, viz: "And section two thousand nine hundred and ninety-seven be amended by adding after Mobile, in the State of Alabama, Indianapolis, in the State of Indiana," and recommend that the bill pass as amended.



## **INTRODUCTION OF SUGAR PALMS.**

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**MARCH 31, 1880.**—Laid on the table and ordered to be printed.

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**Mr. STERLE**, from the Committee on Agriculture, submitted the following

### **R E P O R T :**

[To accompany bill H. R. 1921.]

*The Committee on Agriculture, to whom was referred the bill (H. R. 1921) entitled "A bill making an appropriation for the introduction of sugar-producing palms into the Southern States," have considered the same, and respectfully reports:*

That inasmuch as the Commissioner of Agriculture has full authority under the law to carry out the purposes contemplated in the bill, the committee regard the proposed legislation as entirely unnecessary. It is therefore reported back to the House with a recommendation that it do not pass.

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## JAPANESE INDEMNITY FUND.

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1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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from the Committee on Foreign Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 1353.]

*Committee on Foreign Affairs, to whom were referred bill H. R. 1353 and other bills in relation to the Japanese indemnity fund, having considered the same, submit the following report:*

Conclusions which the committee submit in regard to the fund under consideration cannot be well understood without a knowledge of the period in the history of Japan when the events occurred which led to the payment. We therefore deem it proper to present a brief sketch of the condition and history of Japan during the eventful time of transition from entire seclusion to its entrance into the circle of civilized nations.

The Japanese Empire is a group of several large islands on the east coast of Asia, containing a population of upward of thirty millions of people, and its geographical position made it feasible for its rulers to keep their people from the rest of the world and to rigorously resist all approaches on the part of foreign nations. For more than a thousand years prior to the year 1853, which year will forever be marked in the history of that nation, Japan secluded itself from all intercourse with other nations. The Dutch alone were permitted a trading station, and that was kept under the strictest and most humiliating surveillance and cut off from all intercourse with the rest of the world.

In 1853 Commodore Perry, in command of a United States squadron, overcame all difficulties, by dint of admirable tact and prudence, by persistent assertion of the dignity of his nation, and unfaltering courage, succeeded in breaking down the barriers with which that strange people encircled themselves around, obtained formal interviews with their rulers, and in 1854, when he made his second visit, succeeded in establishing the first treaty with Japan, by which the ports of Simoda and Kanagawa were opened to the United States.

From that time on as the fact of this treaty was known, all other Western powers were enabled to avail themselves of the opportunity to obtain similar treaties.

The United States, as the first power to follow, made a treaty in 1855.

In 1857, Mr. Townsend Harris, consul-general for the United States, made a new treaty, by which the port of Nagasaki was opened.

In 1858, Lord Elgin made a treaty on behalf of Great Britain, pro-

viding for the opening of the additional ports of Nee-agata and Hiogo, in which the United States participated under the "favored nation" clause. France followed, and succeeded in making the same treaty stipulations.

In the intercourse with foreigners which thus suddenly broke upon the secluded people of Japan, the officials who came in contact with the Western ministers and consuls, by order of their government, observed great secrecy and silence on all matters relating to their country, the result of which was that even the resident consuls remained ignorant of the nature of the Japanese Government, which led to much error and misunderstanding.

Commodore Perry's treaty, and the subsequent treaty made by Mr. Harris, were made with the "Shiohoon," or "Tycoon," as he was called by foreigners, who supposed him to be the emperor. In the treaties he is styled "His Majesty." It was afterwards discovered that the real emperor was the Mikado. Mr. Pruyn remarked in a dispatch in 1863: "This is the first official acknowledgment from an officer of the Tycoon of the existence of more than one person in Japan superior in rank to the Tycoon."

Not until 1865 were the treaties ratified by the Mikado, and during the troubled times of 1863 and 1864 it was often asserted by the Japanese opposed to intercourse with foreigners that the treaties were not valid because not made by the supreme ruler, to whom all parties recognized allegiance.

The Government of Japan and the whole structure of its society was of a feudal character, and in many respects resembled the governments and society of Europe during the feudal ages. The Mikado was the hereditary emperor, and was surrounded by a council of the highest hereditary nobility. His residence was in the interior, at Kioto. First in real power, though only fourth in rank, was the Shiogoon, the chief or generalissimo of the land and sea forces, who resided in Yedo. This rank was conferred by appointment, but it was really inherited, as the selection could only be made from the same family. He was the first and mightiest of the great territorial nobles or Daimios, who, like the English earls, dukes, or barons, formed the territorial aristocracy. They were all sovereign in their own principalities, and many were possessed of enormous wealth. Their numerous clansmen or retainers formed the entire class of officials and military men. Their nearer relations were the highest officials; the lower officials were the "Yakonins," and the entire military force the "Samurays," retainers, or soldiers. All these classes looked upon any kind of manual labor as degrading, as much so as a knight or squire of the Middle Ages. The merchants and artisans and the tillers of the soil were the lowest substratum of society, somewhat like the English villains, and politically were ciphers. The English yeoman, the warlike, sturdy, small landholder and farmer, had no counterpart in Japan.

It is natural that in such a society the sudden contact with the Western nations and modern civilization created a profound fermentation. A party of progress, headed by the men who surrounded the Tycoon, who had made the treaties, and in whose territory the ports opened to commerce were situated, at once arose, and, incited by the results of progress which they had seen, made strenuous exertions to bring their people up to a level with Western civilization. A people eminently practical, and naturally apt to learn, could not but be struck with the sight of steamships, locomotives, railroads, and the electric telegraph, models

of which had been presented to them by Commodore Perry and Lord Elgin. It was natural also that a strong reactionary party made the most determined opposition. Thus commenced a struggle of the most violent nature. The retainers of the Daimios, the privileged military class, saw new and dangerous elements arising, and resisted the change as desperately as the Mamelukes of Egypt and the Janissaries of Turkey had done. The Daimios were divided. Some took the lead in progress, like the wealthy and powerful Prince of Edzizen and Daimio of Toza, while others became leaders of the reactionary opposition. Foremost as leaders of the reactionary party were the powerful Daimios of Nagato and Satsuma. Both parties exerted themselves to obtain favor with the Mikado, who lived in retirement in the interior. It was a time of fearful excitement. The United States legation was burned, the British legation was several times assailed, and numbers of foreigners were assassinated, although the government of the Tycoon made constant efforts to protect foreigners and comply with the treaty stipulations. These efforts were often thwarted by the continued resistance and the fluctuations in the strength of parties. The foreign ministers, dealing only with a few persons who were never communicative about their interior affairs, had but a limited knowledge of the nature of these troubles, and held the government of the Tycoon responsible for all the outrages, and for the delays and shortcomings in punishing crimes against foreigners and complying with treaty stipulations, frequently exacting heavy penalties and enforcing them by threats of armed coercion. In the light of subsequent events, however, it appears that what often seemed to be duplicity or vacillating behavior of officials in carrying out treaty stipulations, was really weakness, caused by the constant opposition of a party which often threatened their own existence. During these dissensions, which soon culminated in open war against the Tycoon, the shrewd Princes of Nagato and Satsuma very soon perceived the advantages of modern weapons, armed steamers and the arts of modern warfare, as well as the advantages they could derive from commerce. The result was that in a few years the original cause of this internal warfare, the hostility to foreigners and modern civilization, was lost, and the Mikado and the Daimios became reconciled to progress. From that time the struggle became one for power between the southern Daimios, who had been the former enemies of progress, on one side, and the Tycoon, with the northern Daimios, on the other side, which resulted in the defeat of the Tycoon. The southern Daimios obtaining favor with the Mikado, the defeated Tycoon was forced to resign his office, which was entirely abolished, leaving the Mikado the sole and real monarch.

While the intelligent rulers soon became reconciled to the new order of things, the Janissaries or "Samourays" slowly forgot their old-time grandeur. Many of them continued to cherish a bitter hatred to foreigners and to the enlightened men of their own country who paved the way for modern civilization. Murders of foreigners and of prominent natives frequently occurred. Even within the last few months, Okubo, a relative of the Daimio of Satsuma, who had visited the United States, and who occupied a high position in the government, has been assassinated, by some of the malcontent class, in the open street, while en his way to the cabinet—a martyr to New Japan.

We will close this sketch with an extract from an English author on the wonderful change which was wrought in the aspect of the country in twenty years from 1853, when American enterprise and courage first

lifted the veil from the hidden picture, to 1873, when he wrote his interesting work:

At that time all was mystery, uncertainty, and error concerning these picturesque, fertile, and thickly populated islands of Eastern Asia. We now see the rulers with the light of Western civilization in hand, dispelling their ancient, Oriental, inscrutable darkness. The barriers of exclusiveness have been broken down and many of the finest harbors of the iron-bound coasts are open to ships of foreign powers; the legitimate monarch has thrown aside the imperial purple of seclusion, and with his dynasty has entered the comity of nations; the feudal system, with its sanguinary domineering oligarchy, has been swept away, and constitutional government on a foreign basis placed in its stead; the hated foreigners, their commerce and religion, are no longer debarred from the body politic, and many of them are in the employment of the state; the sea and land forces have obtained a strength and perfection after foreign models that will render the nation stronger in warfare than any other in the far East; where formerly the shores bristled with dangers to navigation, these have been buoyed and light-houses of the first order warn the mariner of them by night. Where twenty years ago the commerce with Europe was restricted to a Dutch trading company of a limited, arbitrary character, under humiliating conditions, at one semi-prison factory, the merchants and ships of all friendly nations are allowed free pratique at six treaty ports; where no foreign diplomatist could take up his residence in the country, the representative of twelve treaty powers have their legations and consulates at the capital and foreign settlements; where the Tokaido, or highway of Yedo, was a way of death to the foreigner, he can now ride in a railway carriage in safety, with the whistle of the locomotive awakening the echoes of the bay; and finally he can telegraph from port to port through the great eastern submarine cable system in fifty hours. Thus in one short generation the Japanese have achieved a position in the civilized world that the foremost nations of Europe took centuries to accomplish.

To this graphic sketch we will add that at the Exposition in Philadelphia, in 1876, the exhibit made by Japan took rank with that of any nation there represented, and that the late reports from the Paris Exposition of 1878 are full of praise of the complete, finished, and interesting features of the Japanese department.

#### SHIMONOSEKI AND THE INDEMNITY.

It was in the midst of the great and distressing struggle through which the enlightened party of progress had to pass against the fierce opposition of the reactionary element that the events occurred which led to the exaction of the large indemnity which is now under consideration.

Mori Daizen, the Daimio of Nagato and Suwo, also called Chosiu or Chosho in the reports, was one of the great leaders of the opposition to the Tycoon. His territory, in which he was supreme and unrestricted master, was on the north side of the Strait of Shimonoseki, on which is the town and harbor of the same name. This strait leads into what is called the Inland Sea of Japan, which, however, is not properly an inland sea, but has two large outlets to the east, the Kino Channel in the northeast and the Boungo Channel in the southeast, both as wide as the main channel of what is called the sea, and one outlet to the west, the Strait of Shimonoseki, which at its narrowest part is only one-quarter of a mile wide.

The Daimio of Nagato was a man of extraordinary military genius and ability. Notwithstanding his opposition to the treaties with foreigners he contrived to obtain large supplies of foreign arms and also manufactured them in his own workshops. His retainers seem to have been a peculiarly warlike body of men, who readily familiarized themselves with the methods of warfare of Western nations. He erected numerous shore batteries on the straits and near the city of Shimonoseki, which were cut into the high, rocky bluff, and also acquired several armed vessels. Thus prepared he closed the straits against navigation.

In 1863 the *Pembroke*, an American merchant steamer, on her passage from Yokohama to Shanghai, was fired into while in the Inland Sea, and near the entrance to the Strait of Shimonoseki, by two armed vessels, bu



into the open sea by the southeastern outlet without sustaining us damage. A French and Dutch vessel were also fired into later and sustained considerable damage, the crew of the latter men killed and five wounded.

the report of the unprovoked attack on the Pembroke reached Ma, Mr. Pruyn, our minister, directed Commander McDougal to with the United States steamer Wyoming to the scene of the and punish the perpetrators. He sailed from Yedo on the 13th 1863, and on the third day entered the Inland Sea by the south-nel. When the Wyoming came in sight of the shore batteries gun was fired by the first one. Rounding the point she discovered steamer Lancefield of four guns, the brig Lanrick of ten guns, ark of four guns anchored opposite the town of Shimonoseki. e batteries fired on the Wyoming as she steamed past them stars and stripes flying; but, reserving her fire, she steered her between the steamer on one side and the bark and brig on the delivering her fire on both sides into them with great effect, and their broadsides. Three 11-inch shells were sent into the d, one of which exploded her boiler, and she was run aground. Lanrick was sinking as the Wyoming left, and the bark was ured. After being engaged one hour and ten minutes the Wyo- rned through the straits, pouring shot and shell into the bat- she passed them. The Wyoming lost four men killed and seven , one of whom died soon after.

Lancefield was a fine iron steamer of about 600 tons, which the ad purchased from the English owners in China for \$115,000; rig Lanrick, pierced for eighteen guns, was purchased from the ers for \$20,000. The bark was Japanese built. The loss of ese was believed to be large, it having been reported that n were killed by the explosion on the Lancefield alone.

sult to the American flag was thus promptly and severely pun- Although the Pembroke had received no injury, her owners pre- claim for damages, based on time lost by detention from her and the Japanese Government recognized and paid the claim, g to ten thousand dollars, and two thousand additional added ter Pruyn.

French and Dutch also avenged the assault made on their ves- e British, in retaliation for the murder of several Englishmen tainers of the Daimio Satsuma, exacted from the government coon the payment of \$400,000, and bombarded and destroyed a of Kagosima, in the territory of Satsuma, and burned four

4, the British minister invited the ministers of the treaty powers pte in a joint expedition to forcibly open the Straits of Shi- . No particular offense was then complained of, except a threat that all foreigners were to be expelled. In a memoran- ch was signed by the ministers of England, the United States, and the Netherlands, the reasons for their action and the object pedition were stated. We can best give them by taking a few from that memorandum.

stating that the Tycoon and several princes were in favor of g the treaties, but that the opposition had obtained influence Mikado, they said:

tical situation of Japan might, therefore, be resumed as follows : ss of the Tycoon, and increasing powerlessness of that prince to resist the ssence of a hostile majority.

Existence of a party favorable to continued relations with foreigners, but at this moment incapable of giving effect to its opinions.

Finally, armaments of every kind prepared, with the loudly-avowed intention of expelling all foreigners from the country.

The position made for the representatives of foreign powers in the natural consequence of the situation and the tendencies which they have just pointed out.

They argued that inaction would make their position weaker, and

That by prolonging the passive and expectant policy, they would unavoidably bring about a denouement which, if there be nothing formidable in it now, owing to the imposing forces that the foreign powers have at their disposal in Japan, might come later when (these forces being called elsewhere) they would have to resist, without adequate means, an enemy fully prepared, and who would choose the hour he might judge most favorable.

How and where the first blow must be struck is clearly determined by an examination of the present state of things.

The hostile position of the Prince of Nagato is then mentioned, and the impunity with which he had interfered with foreign and native commerce pointed out as encouraging the opposition.

"Foreign powers, therefore," continues the memorandum, "in chastising the Prince of Choshu, will meet the exigencies of their position, and best contribute to the security and well-being of their subjects who have been injured by this belligerent Daimio.

"The removal of the obstructions to the free navigation in the Inland Sea, by destruction of the batteries whence the attack has come, will ruin the prestige of the aggressor, open the eyes of the Daimios, deceived by our inaction, and show the inanity of their means and their impossibility of standing before the science and military resources of the treaty powers."

This document is dated July 20, 1864, and shows plainly that the object was intimidation, and the Prince of Nagato was selected as the most belligerent and powerful head of the opposition to have "the first blow struck against him."

The argument that there was a strong force in Japanese waters applied but poorly to the United States, as we had only one war vessel, the Jamestown, and she was unseaworthy.

Meantime a convention was made in Paris by a Japanese embassy with the Emperor of France to open the Inland Sea and the Straits of Shimonoseki. The Tycoon regretted this hasty act of his ambassadors, as he had declared himself unable to carry out the agreement, and as it would only complicate his embarrassments. The convention, therefore, was not confirmed, and never became operative.

The expedition to strike the blow at Shimonoseki sailed to the scene of action. It consisted of nine British war-steamers, carrying 164 guns, with 2,850 men, three French war-steamers, carrying 64 guns and 1,155 men, and four Netherlands war-steamers, carrying 56 guns and 951 men. The British minister, as well as the others, being anxious that we should be represented so as to exhibit to the Japanese entire unanimity among the treaty powers, and the Jamestown, our only war-vessel in those waters, being unseaworthy, a small steamer the Takiang, was chartered, and Lieutenant Pearson was detailed from the Jamestown, with 17 men and a Parrott gun, to take charge of her and accompany the allied fleet.

On the 4th, 5th, 6th, 7th, and 8th of September the batteries of the Daimio of Nagato, commanding the Straits of Shimonoseki, were entirely destroyed, the magazines blown up, the ammunition thrown into the sea, and upwards of seventy guns carried away. A landing party, composed of British, French, and Dutch co-operated in taking and destroying the batteries.

The Takiang sustained no damage. Lieutenant Pearson was complimented for gallant conduct, and a number of the British wounded were cared for on his vessel.

The Daimio of Nagato was completely humbled. He begged for peace, and offered to comply with any terms. He agreed to open the straits to navigation, to pay an indemnity for damages and for ransom of the town of Shimonoseki, and pay the expense of the expedition.

It was in his proposition that the *ransom* of the town was first mentioned, and it could only mean ransom from sack and destruction. It is repeated in the subsequent treaty between the ministers of the foreign powers and the Tycoon. It could hardly have originated with one of the representatives of the treaty powers; but it was not unnatural that the Daimio should have advanced the idea, as a short time previously the town of Kagosima had been burned by the British, and a small village sacked by the French in the punishment which they inflicted for having one of their vessels fired into. These acts of war the Daimio need not have feared after his submission, but in all dealings at that time we should not forget that those people, having lived the life of a nation of hermits as to the rest of the world, knew nothing of international usage, and readily yielded what was demanded at the cannon's mouth.

On the return of the fleet to Yokohama the Tycoon was notified that he would be held responsible for the fulfillment of the stipulations made with the Daimio, "as it devolved on him to chastise this rebellious prince."

The convention entered into between the treaty powers and the Daimio, after reciting the responsibility of the Tycoon in the words quoted, enumerated the following points:

1st. Three million dollars to be paid to the four treaty powers "in indemnification for *past aggressions on the part of Nagato, ransom for Shimonoseki, or expenses by the operations of the squadron.*"

2d. Terms of payment.

3d. Inasmuch as the receipt of money has never been the object of said powers, but the establishment of better relations, the opening of Shimonoseki or some other eligible port in the Inland Sea might be substituted in lieu of the money indemnity.

Our minister, Mr. Pruyn, stated in a dispatch to Secretary of State Seward that he assented to the large amount fixed as indemnity, thinking it would have the effect of forcing the Tycoon to the alternative of opening a port.

When the firing into a French vessel, which occurred in 1863, ten days after the firing into the *Pembroke*, had been made known to the Emperor of the French, he had instructed his minister to demand an indemnity of \$140,000 for the outrage. When the indemnity demanded by the allied powers in October, 1864, was under discussion, the French minister presented the claim that this demand for \$140,000 ought to be paid before the indemnity should be divided. The Netherlands also advanced a similar claim on the ground that one of their ships had been fired into. Thereupon our minister claimed the same preferred payment on the ground that the *Pembroke* had been fired into. England, which had borne the brunt of the fighting and expense, generously—or, may we not say contemptuously?—assented to these demands and conceded that each of the powers whose vessels had been fired into should first receive \$140,000, and that the remainder of the three million dollars should be then equally divided between the four powers. Considering that the demands of our minister for indemnity in the case of the *Pembroke* had been previously presented by him and paid by the Japanese, his coming into this new arrangement seems of doubtful propriety. We can feel but little pride in our extraordinary financial success in this

matter when we remember that we contributed only a small hired steamer, seventeen men, and a gun to the allied fleet, while England furnished 164 guns and 2,850 men, besides leaving a large force at Yokohama for the protection of foreign residents during the absence of the fleet, and we asked for and received \$140,000 more than England.

Six months after the convention of October 22, 1864, the Tycoon paid the first installment of the indemnity agreed upon, stating that he preferred to avail himself of that option rather than open a port, on account of political difficulties.

The ministers of the treaty powers made another alternative proposition, in a conference held by them with the Japanese authorities November 11, 1865, in which they said :

These new propositions are based upon the desire of our governments to furnish another proof of their friendliness to the Tycoon by convincing him that *it has never been their wish to exact money from his government*, but to improve our relations with Japan. These relations can be better promoted by the extension of commerce than by the payment of indemnities. Our governments are, therefore, willing to remit to the Tycoon *two-thirds of the money stipulated in the convention of October 22, 1864*, in return for the immediate opening of Hiogo and Osaka to trade; the formal consent of the Mikado to the treaties and the regulation of the tariff to 5 per cent. In virtue of the London convention of 1862, the opening of Hiogo and Osaka might be demanded at any moment, and a revision of the tariff can be claimed under the treaty itself. A formal announcement by the Mikado of his approval of the treaties is therefore the only additional measure that is now asked, and this is simply a mark of friendship, which ought to be granted without hesitation, and which the Japanese ministers promised a year ago.

On the 24th of November the Mikado did confirm and sanction the treaties, but the Tycoon again declared that on account of political difficulties he could not then open the two ports, Hiogo and Osaka.

We will close this brief review of the facts connected with the payment of this indemnity by stating that the full amount of three million dollars was finally exacted, and that the United States received its share, \$785,000.

The facts we have stated lead to the following conclusion : Of the three objects on which the indemnity was based, viz, indemnification for losses, ransom of the town of Shimonoseki, and the expenses of the expedition, the first could not apply in the case of the United States, as our minister has already presented a demand for damages which had been admitted and paid. The second, ransom to save a city from sack and destruction, could not be demanded by any of the treaty powers, and the word found its way into the treaty through the Daimio Nagato's suggestion. The third object, indemnification for expenses of the expedition, might properly apply largely to the armaments of England, France, and the Netherlands, but the expenses of the United States were only \$11,348, for which we received \$785,000.

It will also be seen that with repeated assurances that money was not wanted, but better relations with Japan, it was first proposed that payment of the whole three millions should be remitted on the opening of a port, and a year after that it was proposed that two millions should be remitted on the opening of the ports of Hiogo and Osaka. The Tycoon pleaded in both cases that his great troubles with his own people made it impossible for him to avail himself of this proposed relief. At that time the sincerity of these excuses was doubted and could not be understood because the internal relations of the government and people were veiled in deep mystery to the foreign ministers. But in the light of subsequent events we find that we cannot doubt the sincerity of the statements then made by the Tycoon. He died soon after, but the bloody civil war in which his successor was soon after involved, and in

which he was defeated and deposed, showed clearly that his difficulties were but too real, and not fictitious, as had been supposed. Moreover, the ports were in fact soon after opened and all facilities for commerce were extended and the entire country opened to friendly intercourse in a much shorter time and much more completely than any of the foreign nations or their ministers could have then hoped or expected. The entire course of the Japanese Government since then has been marked by complete sincerity and fair dealing.

In conclusion, we may add that soon after these events the entire government and the ruling classes of Japan were not only reconciled to intercourse with foreign nations but anxious for it, and seemed to regard Americans, who were the first to open their country to the light of modern civilization, as their special friends. But it is an unpleasant thought that during the struggle between the enlightened party and the reactionary party, which preceded this final success, we exacted heavy contributions from the party which was friendly to us.

Under all these circumstances, we come to the same conclusion to which committees of former Congresses have repeatedly come, that we cannot, consistently with the honor and character of our nation, retain possession of this amount of money, which our government has never felt justified in covering into the Treasury, and which we at least hold, as Mr. Seward said, for "no substantial equivalent."

The history of our intercourse with a nation which promises to be for long years more than ordinarily friendly, and which can, by increased commerce, be made mutually advantageous, should not be marred in its first chapters by an act of great injustice on our part.

In regard to the provision made in the bill under consideration for a donation to be made out of the accumulations of this fund to the officers and crew of the Wyoming and the families of those who were killed, the committee are of the opinion that, although under existing law they are not entitled to prize-money, yet their conspicuous gallantry in upholding the honor of the nation entitles them, under the circumstances, to this act of grateful and generous acknowledgment by their country. Lieutenant Pearson, and the few men from the Jamestown who served with him on the Takiang, are for the same reasons entitled to similar consideration.

The amount received by the United States was \$785,000. The payments were made in gold by Japan and invested by our State Department in our bonds, which were purchased at their market value. The result is a considerable accumulation, making a special fund on hand that has never been covered into the Treasury, which amounted on March 18, 1880, to \$1,640,161.65, as appears by a letter of the Secretary of State hereto appended.

If the amount is returned to Japan, as proposed, there will remain a large surplus sufficient to cover the donation proposed to the officers and crews of the Wyoming and Takiang, and leave a large balance to be disposed of or covered into the Treasury.

We therefore report the accompanying bill, and recommend its passage.

## JAPANESE INDEMNITY FUND.

DEPARTMENT OF STATE,

*Washington, March 18, 1890.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, and in reply to inform you that the Japanese indemnity, including interest to date, amounts to \$1,640,161.65, consisting of United States registered bonds and cash on hand, as follows:

Four per cent. consols .....	\$1,340,100 00
Five per cent. loan of 1881 .....	200,000 00
Coin on hand .....	61 65
	<hr/>
	1,640,161 6

I have the honor to be, sir, your obedient servant,

WM. M. EVARTS.

Hon. S. S. Cox,

*Chairman of Committee on Foreign Affairs, House of Representatives.*

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**RESTORATION TO CITIZENSHIP OF CERTAIN PERSONS.**

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**MARCH 31, 1890.**—Referred to the House Calendar and ordered to be printed.

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**Mr. HILL,** from the Committee on Foreign Affairs, submitted the following

**REPORT:**

[To accompany bill H. R. 3119.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 3119) to provide for the restoration to citizenship of such citizens of the United States as have become naturalized as subjects of Great Britain, report the same back with the following amendment, and recommend the passage of the bill:

Strike out all after line five in section two.

○





## OWNERS OF BRITISH BARK CHANCE.

MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. RICE, from the Committee on Foreign Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 5536.]

*The Committee on Foreign Affairs, to whom was referred the petition of the owners of the British whaling bark Chance, submit the following report and accompanying bill:*

The British whaling bark Chance, owned at Sydney, New South Wales, sailed from that port in the spring of 1871, bound upon a whaling voyage in the Arctic Ocean. Besides the captain, chief officer, and four mates, she had a crew of 28 men. Her owners had fitted her out completely for the voyage at a cost, at Sydney, in March, 1871, of £3,200, or \$16,000. This outlay included £434 advance, though the officers and crew depended for their wages upon the "lay," or their share of the oil and bone taken. To quote the language adopted by the United States counsel in the argument against Great Britain at Geneva:

The masters, officers, and crews of whale-ships are not paid by monthly wages, as is the merchant-marine, but by "lays" or shares in the oil and bone taken. Their proportion of these catchings amounts to a percentage varying from 30 to 40 per cent. of the whole cargo. These men encounter the dangers and toils of this peculiarly hazardous business, and their remuneration for the support of themselves and families is dependent upon the catch of whales during the short season of summer. \* \* \* This business, when undisturbed by violence, is sure of a return. As certain as the harvest to the farmer is the catch of the oil to the whaleman. The average catch of whales is well known and understood by the merchant and seaman. (III Geneva Arbitration, p. 254.)

The Chance was on the whaling-grounds about 10 miles north of Blossom Shoals early in September, 1871. Whales were plenty, and in the usual course of events she would have had a prosperous venture. The season upon these grounds is short, extending from about the 1st of September to the middle of October. News came that the American whaling fleet of some 30 vessels had met with disaster, being caught about 60 miles further north and embargoed by the ice. The information was contained in the following letter, sent by the imprisoned men to those who were fortunately outside the ice-belt:

SHIP CHAMPION,  
Off Point Belcher, September 12, 1871.

*To the masters of the ships in clear water south of Icy Cape:*

GENTLEMEN: By a boat expedition which went out to explore the feasibility of a ship's passage to clear water, report there are seven vessels south of Icy Cape in clear water whaling.

By a meeting of all the masters of the vessels which are embargoed by the ice along this shore, as also those that have been wrecked, I am requested to make known to you our deplorable situation, and ask your assistance.

We have for the last fifteen days been satisfied that there is not the slightest possibility of saving any of our ships or their property, in view of the fact that the northern barrier of ice has set permanently on this shore, shutting in all the fleet north of Icy Cape, leaving only a narrow belt of water from one-quarter to one-half mile in width, extending from Point Belcher to south of Icy Cape. In sounding out the channel we find from Wainwright Inlet to about five miles east-northeast from Icy Cape the water in no place of sufficient depth to float our lightest-draught vessel with a clean hold, in many places not more than three feet.

Before knowing your vessels were in sight of Icy Cape we lighted the brig Kohola to her least draught, also brig Victoria, hoping we should be able to get one of them into clear water to search for some other vessel to come to our aid in saving some of our crews. Both vessels now lie stranded off Wainwright Inlet.

That was our last hope, until your vessels were discovered by one of our boat expeditions. Counting the crews of the four wrecked ships, we number some twelve hundred souls, with not more than three months' provisions and fuel; no clothing suitable for winter wear. An attempt to pass the winter here would be suicidal. Not more than two hundred out of the twelve would survive to tell the sufferings of the others.

Looking our deplorable situation squarely in the face, we feel convinced that to save the lives of our crews a speedy abandonment of our ships is necessary. A change of wind to the north for twenty-four hours would cause the young ice to make so stout as to effectually close up the narrow passage and cut off our retreat by boats.

We realize your peculiar situation as to duty, and the bright prospects you have for a good catch in oil and bone before the season expires; and now call on you, in the voice of humanity, to abandon your whaling, sacrifice your personal interest as well as that of your owners, and put yourselves in condition to receive on board ourselves and crews for transit to some civilized port, feeling assured that our government, so jealous of its philanthropy, will make ample compensation for all your losses. We shall commence sending the sick and some provisions to-morrow. With a small boat and near seventy miles for the men to pull we shall not be able to send much provisions.

Feeling confident that you will not abandon us,

We are, respectfully, yours,

HENRY PEASE, JR.,  
With thirty-one other masters.

Obedient to the call of humanity, the master of the Chance at once gave up his voyage, and prepared to receive these shipwrecked men on board. On the 15th September, the Chance, crowded with men, sailed for Honolulu, where she arrived safely on the 29th October following. She had rescued from impending destruction 96 of our American seamen, six of the vessels they represented hailing from New Bedford and one from Martha's Vineyard.

The ship's agent at Honolulu (it seems without the special authority or sanction of the owners) made up an account, which was approved by the consul of the United States, and forwarded to Washington. It claimed reimbursement for transportation of these shipwrecked seamen at \$35 per man, and this sum, amounting to \$3,360, was paid at the Treasury July 27, 1872, to the agent of the owners. This sum the owners admit to have subsequently received as compensation for transporting, so to speak, that number of *passengers* on board their vessel. The allowance appears to have been made by the First Comptroller, by virtue of authority conceived to have been conferred by the first section of the act of 28th February, 1811, for the relief of destitute seamen (2 Stat., 651), the language of which is as follows:

In all cases where distressed mariners and seamen of the United States have been transported from foreign ports where there was no consul, vice-consul, commercial agent, or vice-commercial agent of the United States, to ports of the United States, and in all cases where they shall hereafter be so transported, there shall be allowed to the master or owner of each vessel in which they shall or may have been transported such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the Comptroller of the Treasury.

Your committee are of opinion that existing statutes for the relief of destitute American seamen in foreign ports do not apply to a case of this

extraordinary character. They have regard to the constantly-recurring accident of sailors being in a foreign port where an American ship happens to be lying, bound sooner or later to return home, and where she can take a few extra men on board without trouble, and without in the least deviating from her intended voyage. Here the voyage was at an instant abandoned, the ship crowded with passengers and forced to go back the route she had come, regardless of the profitable venture that lay close at hand. While in the former case \$35 per man for transportation and provisions furnished might be ample, it is to be viewed here as representing nothing else than such partial relief as the executive officers of the government felt could be extended under a somewhat strained construction of the existing law.

The managing owners of the *Chance* at Sydney promptly addressed a communication to our government through our consul at that port by letter of 15th February, 1872, representing that the voyage was wholly broken up, and asking that this government grant relief for the loss thus incurred. Secretary Fish replied to the United States consul that the claim should properly be presented by the British minister at Washington. It does not appear whether or not the owners were promptly apprized of this reply; but some delay ensued, until the government of Great Britain, in February, 1877, addressed Secretary Fish, asking a favorable consideration of the claim made by the owners for indemnification.

Without quoting the correspondence between the two governments, it is enough to say that the United States assumed the position that so far as the claim was measured by indirect damages and expected profit, it could not form the basis for the adjustment of any demand. Secretary Evarts continues:

I am prepared to admit at once the justness of the observation that rules of strict construction ordinarily applied to the determination of such questions may well be modified in considering a demand growing out of praiseworthy and generous acts in the interests of humanity, of which the one now in question affords so worthy an illustration. Under the circumstances, however, attending the presentation of the claim, it is not within the province of this department to act upon the question of a further pecuniary allowance in connection with the subject, except by submitting the matter to the consideration of Congress.

The President sharing these views has, therefore, directed me to say that the subject will be laid before that body at an early day of its next session with such representations from this department, as it is hoped will secure for the claim presented by Mr. Howard prompt and just attention.—*Evarts to Plunkett, May 28, 1877.*

Copies of the correspondence and other papers relating to the subject were transmitted to the Forty-fifth Congress, but no action was taken thereon. In a communication to the Chairman of the Committee of Claims of the House of Representatives, January 16, 1878, the Secretary of State, after briefly stating the grounds of the claim, says:

The claim strictly construed cannot be held to form a basis for the adjustment of any demands upon this government, but in view of the praiseworthy and generous acts rendered in the case, and consequent loss of the season's fishing, it is considered that some compensation should be paid by this government to the claimants. The claim is, therefore, recommended to your favorable consideration.

Copies of the correspondence with the State Department on this subject are appended.

Your committee share the views thus expressed. These British owners and these British sailors incurred heavy loss in their efforts to save the lives of our American seamen. Protection to our commerce demands that such a signal act of humanity should not be suffered to pass unrecognized or unrewarded. No civilized government, with public ships at its command, would have hesitated for a moment to dispatch them to

the rescue, no matter at how great an expense; or had public ships not been at its disposal, to charter private vessels for this humane mission. Upon principles of justice the *Chance*, owned as she was by foreigners, and subject to no power of seizure by this government, may be considered in some sense as having been *impressed* into the service of the government of the United States. Your committee need not point to appropriations fitly made to sustain our life-saving stations, or argue that this one act of the master of the *Chance* saved more lives of American sailors than many stations for an extended period.

Congress, by general law, in the interests of commerce, has provided for the relief of destitute American seamen in foreign ports. The present case affords an example of an extraordinary disaster, not anticipated by general legislation, but in the judgment of the committee appealing to a sentiment of just dealing and a desire to promote the safety of the hardy men who represent the country on the ocean.

Your committee are of opinion that the case presents urgent grounds for Congressional action. The owners of the *Chance* could obtain no indemnity for their loss from the insurers, but in abandoning their voyage they no doubt acted under the belief suggested in the letter containing the appeal for rescue, that eventually this government would see to it that the loss thus incurred should be in whole or in part made good to them.

It is difficult if not impossible to lay down any principle by which the amount of the indemnity to be awarded in this case shall be determined, nor ought this case to be considered as forming a precedent so far as such amount is concerned. Acts of humanity are not to be paid for in dollars and cents.

As a step, however, toward the solution of the question how much your committee ought to recommend to be paid, it may not be unadvisable to attempt to estimate, first, the actual outlay for which, owing to this abandonment of the voyage, no remuneration has been received; second, the probable profits which the *Chance* forfeited by leaving the whaling grounds.

Evidence on file shows that £2,804 17s. 5d. were expended to date of March 13, 1871, in fitting out the vessel, including advances to officers and crew. To this is to be added one year's insurance paid on £5,000 at 8 per cent., £400; the interest on the value of the vessel one year at 8 per cent. (the current rate at Sydney), £160; and £200 representing the depreciation of the vessel. This gives a total of £3,564 17s. 5d., or \$17,820.

There is no evidence before the committee of how much oil the *Chance* had on board, but files of the daily papers for November, 1871, show that she was reported as having taken 220 barrels sperm and 280 barrels of whale oil.

In the letter of the owners dated February 14, 1872, the whole catch, had not the voyage been interrupted, is estimated at 800 barrels of oil and 12,000 pounds of whalebone, of an estimated aggregate value of \$30,120. Presuming that this estimate was sufficiently favorable to the owners of the bark, your committee assume that at least one-quarter of the contemplated profits of the voyage were lost by its interruption, which would amount to at least \$7,500.

We therefore recommend the payment of that sum and the passage of the accompanying bill.

DEPARTMENT OF STATE,  
Washington, January 16, 1878.

I have the honor to inclose herewith, for consideration by the Committee the claim of the late owners of the British whaling bark Chance, for insurances sustained by that vessel in transporting to Honolulu, in 1871, ninety-six bales of sealion, belonging to the American whaling fleet which was wrecked in that year; with such correspondence upon the subject as is considered of value to your committee in forming a correct conclusion as to its merits.

The claim was first presented to the department in 1872, through the commercial agent of the United States at Sydney, New South Wales, who was informed that it might properly be presented by the minister of Great Britain at this capital. Accordingly, some time had elapsed, in February, 1877, Sir Edward Thornton, Her Majesty's minister, submitted the claim, under instructions from Lord

Salisbury, who is strictly construed cannot be held to form a basis for the adjustment of any claim upon this government, but in view of the praiseworthy and generous acts of the British government in the case, and consequent loss of the season's fishing, it is considered that compensation should be paid by this government to the claimants. The claim is recommended to your favorable consideration. It is also recommended that an examination be made, upon an examination of the accompanying correspondence, that a claim has already been made and paid for the maintenance of the rescued seamen on the bark Chance.

I have the honor to be, sir, your obedient servant,

WM. M. EVARTS.

JOHN M. BRIGHT,  
Chairman of Committee on Claims, House of Representatives.

[Inclosures.]

Letter from Thornton to Mr. Fish, February 17, 1877, with accompaniment.  
Letter from Thornton to Sir E. Thornton, February 28, 1877.

Letter from Thornton to Mr. Evarts, May 4, 1877.

Letter from Evarts to Mr. Plunkett, May 28, 1877.

Letter from Plunkett to Mr. Evarts, October 11, 1877, with accompaniments.

WASHINGTON, February 17, 1877.

In compliance with an instruction which I have received from the Earl of Salisbury, I have the honor to inclose copy of a letter addressed to his lordship by Mr. Howard, advancing, on behalf of the late owners of the whaling bark Chance, a claim against the Government of the United States for compensation for the loss sustained through the rescue and conveyance to Honolulu on board that vessel of the wrecked crews of the American whaling fleet, whereby the season's fishing was

lost. My lordship has desired me to submit this claim to the favorable consideration of the Government of the United States, in the hope that some further compensation may be obtained beyond that already made, as stated by Mr. Howard, in reimbursement of the cost of the maintenance of the American crews.

I have the honor to be, with the highest consideration, sir, your obedient servant,  
EDWARD THORNTON.

HAMILTON FISH, &c., &c., &c.

40 OLD BROAD STREET,  
London, E. C., January 24, 1877.

SIR: I beg to address your lordship on behalf of the late owners of the whaling bark Chance, under the following circumstances:

In the year 1871 this vessel, belonging to the port of Sydney, New South Wales, and owned by Mr. John Howard, having been most thoroughly fitted out for a ten months' whaling voyage in the Arctic Ocean, sailed, and during such voyage fell in with, and rescued the wrecked crews of the American whaling fleet, and conveyed them to Honolulu. He was thus obliged to quit the whaling ground early in September, and so the season was lost, and he was compelled to return to Sydney.

When he was made at Honolulu by the ship's agents there (but without the knowledge or sanction of the owners) for compensation for the maintenance of the ship's crews, and this claim, amounting to \$3,360, was settled by the American government. As the claim made by the ship's agents at Honolulu was confined to

expenditure for the maintenance of the crews, the managing owners on the 15th of February, 1872, addressed the following letter to the then Secretary of State, U. S. A. at Washington. (See note from Sir E. Thornton, of October 11, 1877, for this communication.)

I am, &c.,

The EARL OF DERBY.

ALFRED HOWARD.

DEPARTMENT OF STATE,

*Washington, February 28, 1877.*

SIR: I have the honor to acknowledge the receipt of your note of the 17th instant inclosing, by direction of the Earl of Derby, a copy of a letter addressed to his lordship by a Mr. Howard, advancing a claim on this government for losses sustained through the rescue and conveyance to Honolulu on board the whaling bark *Chance* of the shipwrecked crews of certain American whaling vessels, whereby, as is stated, the fishing season was lost.

You inform me that Lord Derby has desired you to submit this claim to the favorable consideration of this government, in the hope that some further compensation may be made beyond the recompense given to Mr. Howard for the services in question.

Upon an examination of Mr. Howard's communication, it appears that the *Chance* during a whaling cruise, fell in with and rescued the shipwrecked crews of certain American whaling vessels, and conveyed them to Honolulu; that a claim was thereupon made by the ship agents for the maintenance of the crews while on board the vessel, amounting to \$3,360, which was paid, and that a claim was afterwards preferred through Mr. Hall, the consular agent at Sidney, amounting to \$30,120. This amount is arrived at by estimating the amount of oil and whalebone which might possibly have been obtained by the vessel, had she not been compelled to give up her voyage and go to Honolulu, the estimate of profits on the venture being placed at the amount of \$30,120.

With reference to this claim preferred through Mr. Hall, it is proper to say that the officer addressed the Department of State, in the year 1872, concerning this claim. To which, in April of the same year, a reply was made that the claim was so general, being based solely on estimated profits, that it was doubtful whether it was seriously brought forward, but that if the person preferring the claim desired to address the government, it should more properly be done through the proper channel for that purpose, and it was supposed that Mr. Hall had communicated to the persons who had applied to him this information so given to him. In any event, it formed a part of the official archives of that office.

As you have now addressed me by instruction from Lord Derby, I have to say in reply that the claim as preferred is purely a matter of indirect damages and of expected profits growing out of a contemplated whaling cruise, and that it seems hardly practicable to assume to reward the master or parties interested for an act of mercy in transporting to a place of safety shipwrecked mariners by assuming to pay to these parties the expected profits which they hoped to have reaped from any commercial venture, but that if Her Majesty's Government, after an examination of the facts, shall reach the opinion that sufficient compensation has not been made for the services rendered, this Department would willingly take steps to examine the question, with a view to bringing the subject to the attention of Congress.

I may add that as nothing has been heard concerning this claim from the owners of the vessel since the communication addressed to Mr. Hall in 1872, it would require the action of Congress to provide further remuneration.

I have the honor to be, with the highest consideration, sir, your obedient servant.

HAMILTON FISH.

The R. H. Sir EDWARD THORNTON, K. C. B.,  
*&c., &c., &c.*

WASHINGTON, *May 4, 1877.*

SIR: In compliance with Lord Derby's instructions, I have the honor to invite your attention to a note which I addressed to your predecessor on the 17th of February last relative to a claim on the Government of the United States, presented by Mr. Howard on behalf of the late owners of the whaling bark *Chance*, for compensation for the loss sustained by them through the rescue and conveyance to Honolulu on board that vessel of the shipwrecked crews of the American whaling fleet, whereby the season's fishing was lost.

Mr. Fish, in his answer, dated the 28th of that month, objected to the claim, on the

ground that it was founded on indirect damages and expected profits growing out of contemplated whaling cruise, and that it seemed hardly practicable to reward the parties interested for an act of mercy, by paying those parties the expected profits which they hoped to have reaped from a commercial venture.

But Lord Derby has directed me to submit to you that, though the claim as presented is certainly based upon expected profits, how, if complete justice were done, could it be otherwise; yet the claim might well also have been for fitting out and provisioning the vessel for the voyage, and the loss occasioned to the owner by its abandonment in the cause of humanity. From an extract from a letter from Mr. H. H. Hall, the consul of the United States at Sydney, to the assistant secretary of state, dated February 16, 1872, it appears that two-thirds of the amount, \$30,120, claimed by the owners were in respect of outfit and costs of voyage, and Mr. Hall stated that the above amount would leave about one-third profit on the voyage to the owners.

The Earl of Derby therefore entertains the hope that the Government of the United States will again consider whether a fair case for compensation has not been made out, and whether the owners ought not to be fully compensated accordingly.

I have the honor to be, with the highest consideration, sir, your obedient servant,  
EDWARD THORNTON.

Hon. WILLIAM M. EVARTS.

DEPARTMENT OF STATE,  
Washington, May 28, 1877.

SIR: Referring to the note of the 4th instant which I had the honor to receive from Mr. Edward Thornton, in reference to the further claim of Mr. Howard on account of the late owners of the British whaling bark Chance, and also to previous correspondence in relation to the matter between my predecessor, Mr. Fish, and Her Majesty's minister at this capital, I have now the honor to state that, upon a review of that correspondence, and a careful consideration of the circumstances attending the chivalrous and humane conduct of the master of the British vessel, and appreciating in the highest degree the generous impulses that must have entered into the act, I am still constrained to agree fully with the views of my predecessor, as expressed in his note to Her Majesty's minister, that so far as the additional claim is measured by indirect damages and expected profits it cannot properly be held to form the basis for the admission of any demand against this government. I am prepared to admit at once the justness of the observation that rules of strict construction, ordinarily applied to the determination of such questions, may well be modified in considering a demand growing out of praiseworthy and generous acts in the interest of humanity, of which the one now in question affords so worthy an illustration.

Under the circumstances, however, attending the presentation of the claim, it is not within the province of this Department to act upon the question of a further pecuniary allowance in connection with the subject, except by submitting the matter to the consideration of Congress.

The President, sharing these views, has therefore directed me to say that the subject will be laid before that body at an early day of its next session, with such representations from this Department as, it is hoped, will secure for the claim presented by Mr. Howard prompt and just attention.

I have the honor to be, with the highest consideration, sir, your obedient servant,  
WM. M. EVARTS.

Hon. FRANCIS R. PLUNKETT,  
&c., &c., &c.

WASHINGTON, October 11, 1877.

SIR: With reference to the note which you were so good as to address to me on the 5th of last May, informing me that, in view of the peculiar circumstances of the case, the United States Government would be prepared to lay before Congress, at an early date of its next session, the claim presented by Mr. Howard, on account of the late owners of the British whaling bark Chance, I have the honor, in compliance with instructions received from the Earl of Derby, to transmit to you herewith copy of a further letter from Mr. Howard, inclosing additional documents in support of his claim.

I have the honor to be, with the highest consideration, sir, your obedient servant,  
F. W. PLUNKETT.

Hon. WILLIAM M. EVARTS,  
&c., &c., &c.

40 OLD BROAD STREET, E. C.,  
London, September 14, 1877.

MY LORD: I was favored with your lordship's letter of the 18th of June, informing me that Mr. Evarts, although of opinion that so far as the additional claim was measured by indirect damages and expected profits, it could not properly be held to form the basis for a demand against the United States Government, nevertheless the President, sharing Mr. Evarts's views that the construction usually applied to the determination of such questions might be modified in considering a demand growing out of generous acts, would be prepared to lay the subject before Congress, with such representations from the Department of State as would, it was hoped, secure just and prompt attention. I duly communicated the result to Mr. Jacob L. Montefiore, of 425 Great Winchester Street Buildings (the London agent of the late owners).

These gentlemen have now forwarded the further documents, which I beg to inclose, in support of their claim, and they express a hope that they may be submitted to the American Government before a final determination is arrived at.

I am, &c.,

ALFRED HOWARD.

The Lord TENTERDEN, C. B.,  
&c., &c., &c.

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B.

*Invoice of the estimated amount of oil and whalebone which would have been taken by the British bark Chance, in the Arctic Ocean, had she not been compelled to leave with the shipwrecked seamen of the American whaling fleet.*

800 barrels oil, each $31\frac{1}{2}$ = 25,200 gallons, at 60 cents.....	\$15,120 00
12,000 pounds whalebone, at \$1.25 .....	15,000 00
	<hr/> \$30,120 00
Less claims for compensation made through our agents, Messrs. H. Hackfield & Co., Honolulu .....	3,360 00
	<hr/> 26,760 00

E. E.

BARRON & AUSTIN,  
Managing Owners.

SYDNEY, February 14, 1872.

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SYDNEY, February 15, 1872.

SIR: We have the honor to apply, through Mr. H. H. Hall, the United States consul here, for compensation for losses sustained by the owners, officers, and crew of the British bark Chance, in consequence of her having to leave the Arctic Ocean, in the beginning of September, 1871, for the purpose of conveying to Honolulu the shipwrecked seamen of the American whaling fleet there, and thereby losing the season, as shown by inclosure marked A, which you will observe is signed by nine captains of the whaling fleet lying at Honolulu.

The inclosure marked B is an invoice of the actual loss sustained, and which, we may state, is underestimated.

We hope this application will be favorably entertained and an early reply sent, as a considerable portion of the amount claimed, viz, \$30,120, belongs to the officers and crew of the vessel.

We have the honor to be, sir, your most obedient servants,

BARRON & AUSTIN,  
Managing Owners.

Hon. HAMILTON FISH,  
Secretary of State, Washington.

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UNITED STATES CONSULATE,  
Sydney, New South Wales.

On the 11th day of June, 1877, before me, James H. Williams, United States consul for Sydney and the dependencies thereof, personally appeared J. S. Barron, of the late firm of Barron & Austin; John Williams; W. S. Laidley, of the late firm of Laidley, Inland & Co.; S. A. Joseph, of the firm of Montifiore, Joseph & Co.; and A. Hilder, the attorney of William Wolfen, all of Sydney, and made oath that on the 13th day of March, 1871, they and the firms above named were the owners of the British bark



Chance, and that on about that date they paid to Barron & Austin, the managing owners, the sum of £3,204 17s. 5d. sterling, in the proportion of their respective shares, as per annexed account marked No. 1, and that they have received no compensation therefor.

They further made oath that the captain of the said bark Chance had no authority from them, or either of them, to deviate from the voyage for which the said ship was fitted out and dispatched, viz, what is termed a whaling voyage, but of his own discretion, and, as they verily believe, from motives of humanity, he departed from his instructions and the original object of the voyage for the purpose of rescuing the crews of several American ships which had been wrecked in the Arctic Ocean and placing them on the Sandwich Islands, where they could communicate with their government and friends, by which the said owners are actual losers of the above-named sum of £3,204 17s. 5d. sterling, and also of the interest thereon and depreciation, as stated in the annexed account marked No. 2.

And they further verily believe that they are losers of the prospective profits of the voyage, which was entirely broken up and destroyed by the above-named action of the captain, without their knowledge or consent, the amount of which is set forth in account No. 3, also herunto appended, which loss, actual and estimated, amounts to the sum of £8,009 2s. 2d. sterling.

Sworn to and subscribed before me by J. G. Barron:

John Williams, W. G. Laidley:

S. A. Joseph, A. Hilder:

J. G. BARRON.

JOHN WILLIAMS.

WM. LAIDLEY.

S. A. JOSEPH.

ALF'D HILDER.

At Sydney, this 11th day of June, 1877.

J. H. WILLIAMS,  
*United States Consul.*

#### ACCOUNT No. 1.—J. H. W.

*Owners of British bark Chance in account current with Barron & Austin.*

Dr.

1871.

Mur. 13. To amount expended in fitting out vessel for an Arctic whaling voyage, including advances to officers and crew, per vouchers in our hands.....	£2,804 17 5
To amount paid nine years' insurance on £5,000, at 8 per cent. per annum.....	400 0 0
	<hr/>
	3,204 17 5

E. E.

BARRON & AUSTIN,  
*Managing Owners.*

SYDNEY, March 13, 1871.

#### ACCOUNT No. 2.—J. H. W.

*The United States Government Dr. to owners of British bark Chance.*

To cost of outfit of vessel, per account herewith.....	£3,204 17 5
To interest on £2,800, value of vessel one year, at 8 per cent.....	160 0 0
To depreciation of vessel during voyage of 11 months, 10 per cent. on £2,000.....	200 0 0
To interest on £3,564 17s. 5d. from March 13, 1871, to July 31, 1877=6 years 140 days, at 8 per cent. per annum.....	1,820 70 6
	<hr/>
	5,385 7 11

E. E.

J. G. BARRON,  
*Resident Partner of the late Firm of Barron & Austin.*

SYDNEY, June 11, 1877.

H. Rep. 671—2

## OWNERS OF BRITISH BARK CHANCE.

CONSULATE OF THE UNITED STATES,  
Sydney, New South Wales.

I, James H. Williams, United States consul for Sydney, do hereby certify that the usual rate of interest on current accounts in New South Wales is 8 per cent. per annum; and I further certify that there is no rate of interest established by law, but that in all cases where there is not a specific agreement the above-named interest is allowed by the courts.

As witness my hand and seal of office at Sydney, the 11th day of June, 1877.

J. H. WILLIAMS,  
United States Consul.

## ACCOUNT No. 3.—J. H. W.

*The United States Government Dr. to owners of British bark Chance.*

To estimated amount through loss of voyage (per copy of invoice herewith) .....	£5, 575 0 0
To interest on £5,575 from February 14, 1872, to July 31, 1877 = 5 years and 167 days, at 8 per cent. per annum .....	2, 434 2 2
	<hr/> 8, 009 2 2

E. E.

J. G. BARRON,  
*Resident Partner of the late Firm of Barron & Austin, Managing Owners.*  
SYDNEY, June 11, 1877.

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## CARLOS BUTTERFIELD & CO.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HENDON, from the Committee on Foreign Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 269.]

*The Committee on Foreign Affairs, to whom was referred the memorial of Carlos Butterfield in relation to the claim of Carlos Butterfield & Co. lately represented by said Carlos Butterfield) against the Kingdom of Denmark, have had the same under consideration, and report as follows:*

The facts of the case are briefly that the late firm of Carlos Butterfield & Co., composed of citizens of the United States, doing business in the cities of New York and Mexico, in the autumn of the year 1854 owned, at the port of New York, a steamer, the Ben Franklin, and a bark, the Catharine Augusta; aboard these vessels they shipped valuable cargoes of military stores, and with an American register, regular clearances, and flying the American flag, dispatched them for St. Thomas, or a market; the bark sailing on the 2d of September, the steamer on the 19th.

The steamer arrived at the Danish island of St. Thomas September 29, 1854, and the bark on the following day, partially disabled by storms encountered, as well as short of water.

Application being made to the Danish governor of St. Thomas for permission to land the cargo of the bark in order to repair the vessel, it was refused, and all subjects of Denmark were prohibited from succoring the distressed vessel.

Finally, after exacting a heavy bond that no illegal expedition against any friendly power should be made by the vessel, permission to make the necessary repairs was granted, but this only after a delay of fully a month from the arrival of the bark.

At the time of the arrival of the two vessels at St. Thomas a contract had been entered into between the only authorized agents of the owners in the city of Mexico and the house of Cammett & Co., of the same city, acting in behalf of the Mexican Government, for the sale of the vessels and cargoes to that government for the sum of \$500,000 cash; but upon learning of the detention of the vessels at St. Thomas by the governor on suspicion of a hostile design against some other government, Messrs. Cammett & Co., on the *express ground* of this detention, suspended further action under their contract for several months.

Finally, they expressed themselves willing to consummate their

TREASURY DEPARTMENT, *February 25, 1880.*

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, submitting for my consideration the bill (H. R. 4247) to change the name of the steam pleasure yacht W. J. Gordon to Salmo.

The department has no knowledge of this yacht other than the fact that she was first documented at Cleveland in the year 1879. The department sees no objection to the change of name in this case; and, as a general thing, the change of name of pleasure yachts is of comparatively less importance than in the case of vessels engaged in trade, which, on account of age or bad repute, it is sometimes important to hold to the name by which they have been generally known.

Very respectfully,

JOHN SHERMAN, *Secretary.*

Hon. JOHN E. KENNA,

*Subcommittee on Commerce, House of Representatives.*

OFFICE OF D. H. MERRITT,  
*Marquette, Mich., January 27, 1880.*

DEAR SIR: I hand you inclosed a bill to change the name of the steam pleasure yacht W. J. Gordon to that of Salmo. As you are aware, a party of Marquette gentlemen purchased the yacht last fall for pleasure purposes, and that her present name is not considered by them appropriate. I, therefore, in conformity to their request and as managing owner, make the request to have it changed by authority of Congress. I would also add that the yacht is not indebted to any one, and that the change is desired only to satisfy her owners and not to evade any law or defraud any one.

Yours, truly,

D. H. MERRITT.

Hon. JAY A. HUBBELL.

I hereby vouch for and indorse as true the statements contained in the within letter. The writer is pecuniarily responsible and in all respects trustworthy. I have a personal knowledge of all the facts stated by him and know them to be true, and I also know all of the parties interested in the yacht W. J. Gordon, and that the only reasons for the change of name asked for are those stated within; that there are no claims against the said yacht and no reasons of a pecuniary nature why the change of name should not be made.

JAY A. HUBBELL.

**ARTICLE 103 OF THE RULES AND ARTICLES OF WAR.**

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**MARCH 31, 1880.**—Referred to the House Calendar and ordered to be printed.

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**MR. SPARKS**, from the Committee on Military Affairs, submitted the following

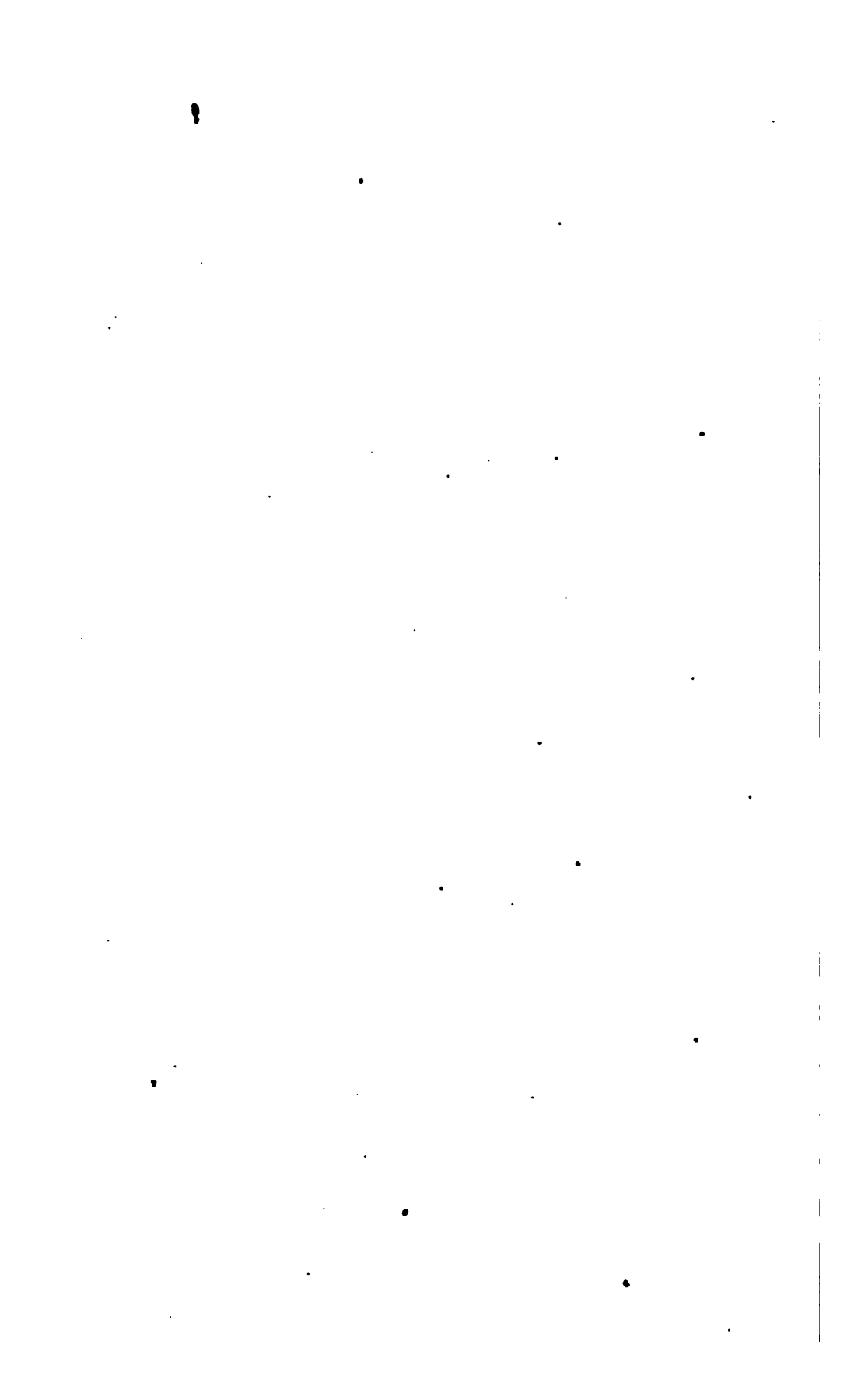
**REPORT:**

[To accompany bill S. 744.]

*The Committee on Military Affairs, to whom was referred the bill (S. 744) to amend article 103 of the Rules and Articles of War, having considered said bill, report the same back to the House with amendments as follows, viz :*

Insert, after the word desertion in the fourth line, the word "committed," and in the fifth line strike out the word "three" and insert "two" in lieu thereof; and add to the section the following: "*Provided, That said limitation shall not begin until the end of the term for which said person enlisted.*" Which amendments your committee ask may be adopted, and the bill as thus amended concurred in.

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JEREMIAH PHELAN.

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MARCH 31, 1890.—Laid on the table and ordered to be printed.

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Mr. DIBRELL, from the Committee on Military Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 4199.]

*The Committee on Military Affairs, to whom was referred the bill (H. R. 4199) to place Hospital Steward Jeremiah Phelan upon the retired list of the United States Army as a commissioned officer, accompanied by a petition, having had the same under consideration, respectfully report :*

That the facts stated in the petition (the only testimony before the committee) do not justify the demand made in the petition and the bill. This officer, it appears, has been in the service for twenty-eight years, but generally upon easy service; never in battle nor wounded.

Your committee, therefore, recommend the rejection of the bill.







## DETAIL OF RETIRED OFFICERS AT COLLEGES.

MARCH 31, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. DIBRELL, from the Committee on Military Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 4913.]

*The Committee on Military Affairs, to whom was referred the bill (H. R. 4913) to provide for the detail of retired officers of the Army at colleges, universities, and other institutions of learning in the United States, having had the same under consideration, respectfully submit the following report:*

Your committee are satisfied that the passage of said bill will result in much good to the country in imparting a thorough military education to the youth of the country that could not otherwise be obtained, will have a tendency to promote and foster the cause of education throughout the country, and will add a very trifling expense to the cost.

Your committee further report that of the four hundred retired officers now on the rolls, a large majority of them are now without any employment; that they are well qualified for professors or teachers in the colleges and institutions of learning; and for the additional 25 per cent. added to their retired pay they can well afford to be thus detailed and employed; and it would be not only for their pecuniary benefit, but would be beneficial in every respect to be thus employed.

Your committee would further report that the advantages to be derived from a general military education amongst the young men of the country cannot be estimated, as the citizen-soldiery of the United States cannot be excelled by that of any country in the world for their promptness in responding to their country's call and for gallantry.

Your committee would further report that this bill meets the approval of the Secretary of War; in fact, was prepared and submitted to the committee by him; and they adopt his letter, herewith appended, dated March 3, 1880, as a part of this report, and ask that it be printed with this report as a part of the same.

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WAR DEPARTMENT,  
Washington City, March 3, 1880.

SIR: Referring to our conversation last week on the subject, I beg to inclose a draught of "An act to provide for the detail of retired officers of the Army at colleges, universities, and other institutions of learning in the United States." The present law on the subject will be found in sections 1225 and 1260 of the Revised Statutes. (See page 263 of the Army Register for 1880. Copy herewith.)

The law, as it exists at present, authorizes the detail of officers from the active list

as well as from the retired list; it provides that while so serving, such retired officers shall be allowed no extra compensation; and the whole number of officers to be detailed is limited to thirty.

The detail of officers from the active list is objectionable, because it takes junior officers away from their proper duties with their companies, imposes extra duty on those who remain, and occasionally leaves a company with not enough officers for discipline. It is objectionable to the colleges, because such officers can only be detailed for a limited time (three years), and when relieved another college may secure the detail, in which event the college losing the detail must return the arms issued to it under the law, and the work so satisfactorily begun is suspended for an indefinite time. This results from two causes: the detail of the officer from the active list, and the limited number allowed to be detailed.

Owing to this latter cause, whenever an officer is relieved, or is about to be relieved, the department is beset with applications from colleges seeking to secure the detail, and but two courses are open: either to confine the detail to the college which first secured it, or to rotate the details and give as many colleges as possible the benefit of the law. Either course is unsatisfactory, and a source of much embarrassment to the Secretary of War. The remedy is to make the details as permanent as practicable, to give as many colleges as possible the benefit of the law, with the least expense and inconvenience to the public service. This is accomplished by confining the details to the retired list, which now numbers 400, and is believed to be ample to supply all the institutions that will apply. But retired officers cannot afford to change their residences and undertake the responsibilities of the position unless compensated therefor. The present bill is accordingly drawn to allow them *full pay* (no allowances) while on duty. I have to ask also that you will cause this letter to be printed.

Very respectfully, your obedient servant,

ALEX. RAMSEY,  
*Secretary of War.*

Hon. W. A. J. SPARKS,  
*Chairman Committee on Military Affairs, House of Representatives.*

○

PHILIP LESTER.

1880.—Committed to the Committee of the Whole House and ordered to be printed.

RELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5537.]

Committee on Military Affairs, to whom was referred the bill (H. R. 5537) for the relief of Philip Lester, having had the same under consideration, submit the following report:

the letter of the Adjutant-General, U. S. A., herewith filed, it that Philip Lester was commissioned a second lieutenant Company B, Sixteenth Indiana Volunteer Infantry, on the 31st March, 1863, entered as such, when in fact there was no vacancy in said company until 1st May, 1863. He having been mustered and paid from 31st March to 1st May, 1863. The committee are of opinion that the error in commissioning, mustering and paying of said Lester was no fault of his; that he rendered good service as long since paid up, and should not, at this late date, be required to refund the pay, which is only for one month and one day. They therefore recommend the passage of the accompanying bill as a substitute for H. R. 762.

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
Washington, June 19, 1876.

I have the honor to acknowledge the receipt of your reference of the 15th instant (per W. C. Garrard, clerk) of copy of bill for the relief of Philip Lester, late Second Lieutenant Company B, Sixteenth Indiana Volunteers, and requesting that the Committee on War Claims be furnished with any information in the case the records of this office afford. The records of this office show that the said Philip Lester was mustered in and appointed first sergeant Company B, Sixteenth Indiana Volunteers, July 24, 1862. On August 1st, 1862, he is reported first sergeant, present. He was mustered as second lieutenant said regiment (as amended by this office), to date May 1, 1863; promoted to first lieutenant, to date March 24, 1864; and discharged as of the latter grade, for resignation, by Special Order No. 152, dated June 10, 1864, from headquarters Department of the Gulf. There is no evidence of any service rendered by Lester as a second lieutenant, nor was there a vacancy for him as such, until May 1, 1863, caused by the promotion, on that date, of Second Lieutenant Thompson, and his claim for pay as of that grade, to this office in July, 1876, was accordingly rejected by letter from here dated August 14, 1877. (Copy herewith.) A copy of bill is herewith returned.

Very respectfully, your obedient servant,

E. D. TOWNSEND,  
Adjutant-General.

CHAIRMAN  
Committee on War Claims, House of Representatives,  
Washington, D. C.

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
*Washington, August 14, 1867.*

SIR: I have respectfully to acknowledge the receipt of the papers in your case, forwarded to the Paymaster-General, U. S. A., and by him referred to this office for decision, requesting that you may be allowed pay as second lieutenant Company B, Sixteenth Indiana Volunteers, from March 31 to July 1, 1863.

In reply I have to inform you that the regulations of this department prohibit the recognition of any person as an officer prior to the date he receives his commission and enters upon duty under the same with his proper command, i. e., in a command where a vacancy exists for him.

The records here filed show that you were improperly mustered into the service as second lieutenant to date March 31, 1863; no vacancy existed for you in that grade until May 1, 1863. It appears also that you received pay as second lieutenant from March 31, 1863. You are, therefore, indebted to the government for the amount received by you from March 31 to May 1, 1863, and the same should be immediately refunded to the Pay Department.

The attention of the Treasury Department has been invited to the aforesaid overpayment with a view to such action as law and regulation require.

Your commission as second lieutenant is returned.

I am, sir, very respectfully, your obedient servant,

THOMAS M. VINCENT,  
*Assistant Adjutant-General.*

MR. PHILIP LESTER,  
*Late First Lieutenant Sixteenth Indiana Volunteers.*  
(Care D. C. Thomas, esq., claim agent, Salem, Ind.)

Official copy.

THOMAS M. VINCENT,  
*Assistant Adjutant-General.*

JAMES KANE.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. DIBRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5538.]

*The Committee on Military Affairs, to whom was referred the petition of James Kane, late second lieutenant Thirteenth Regiment Pennsylvania Cavalry, having had the same under consideration, respectfully submit the following report:*

Lieutenant Kane enlisted in said regiment as a private soldier in November, 1861; was promoted to second lieutenant of his company March, 1862; was captured and held as a prisoner of war for nine months; was paroled at City Point, Va., 14th March, 1864, and sent to parole camp at Annapolis, Md.; was granted a twenty days' leave of absence, and returned at its expiration. Eight days after applied for another twenty days' leave of absence, but before its return to him he left camp and went to his home, as he alleges, to see a sick wife. The second twenty days' leave of absence was granted after he left. He promptly reported to the Adjutant-General his reasons for leaving; but he was ordered on trial by a military board and dismissed the service.

The Adjutant-General of the Army, by letter dated 29th July, 1879, says the disability occasioned by the dismissal of Lieutenant Kane was removed, and the governor of Pennsylvania notified of the fact.

Your committee think that, in view of the fact that Lieutenant Kane was still on parole and could not be assigned to duty with his company, and had been nine months a prisoner of war, and the leave of absence was granted although after he had left, while his leaving without authority was an indiscretion, it certainly did not merit such severe punishment as a dismissal from the Army. They therefore recommend the passage of the accompanying bill for his relief, which is intended to remove all stain upon him by reason of said dismissal.



## PURCHASING TOBACCO FOR THE ARMY.

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MARCH 31, 1890.—Referred to the House Calendar and ordered to be printed.

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Mr. JOHNSTON, from the Committee on Military Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 4395.]

*The Committee on Military Affairs, to whom was referred the bill H. R. 4395, respectfully report:*

That the object of this bill is to introduce a more general competition into the proposals for supplying the Army with tobacco. At present contracts are made in New York on proposals invited in that city, Chicago, and Saint Louis. This bill provides that the tobacco for the Army shall be purchased at the seat of government, away from the influence of any large firm, and under the immediate supervision of the Secretary of War and Commissary-General, and that proposals for these contracts shall be invited in all the cities where tobacco is manufactured on a large scale.

The bill also prescribes rules for the making of contracts with the bidders; but as those under which the Commissary Department is now acting seem to be very judicious this committee think that legislation on that part of the subject is unnecessary. They have therefore amended the bill by striking out those rules and the times of advertising.

The committee recommend the adoption of the amendment and the passage of the bill as amended.





D. T. KIRBY.

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MARCH 31, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BROWNE, from the Committee on Military Affairs, submitted the following

## REPORT:

[To accompany bill H. R. 5539.]

*The Committee on Military Affairs, to whom was referred the bill (H. R. 3140) for the relief of D. T. Kirby, respectfully report:*

That on the breaking out of the war of the rebellion D. T. Kirby was one of the first of the citizens of Missouri to offer his services to the general government, and that he recruited, maintained, and organized an infantry company of 100 men, which was mustered into the service in June, 1861, as Company E, Eighth Missouri Volunteer Infantry, and of which he was mustered as captain. In the same month he accompanied his regiment to the field, when it joined the troops under Grant at Paducah, Ky., and thereafter made part of the army that captured Fort Henry and Fort Donelson, and thereafter took part in the battles of Shiloh and Corinth, and all of the marches, battles, sieges, and assaults of the Army of the Tennessee that resulted in the capture of Arkansas Post, Vicksburg, Mission Ridge, Atlanta, Savannah, and Jonesborough, and culminated in the surrender of Johnston's army of the Tennessee at Durham Station in North Carolina.

During this four years he held, consecutively, the commissions of captain, major, and lieutenant-colonel, received four severe wounds, and was an active, intelligent, daring officer, and at the conclusion of the war was honorably mustered out of the military service of the United States with the brevet commissions of colonel and brigadier-general of volunteers, and the highest commendation from Generals Grant, Sherman, Logan, Blair, and other officers with whom he served.

In 1866, on the reorganization of the Regular Army, he was appointed a captain of the Thirty-ninth United States Infantry, and received the regular brevets of major, for Chickasaw Bayou, Miss.; lieutenant-colonel, for assault on Vicksburg; and colonel, for Mission Ridge, Tenn., and Rivers Bridge, S. C.

In 1868, while serving with his regiment at Fort Pike, La., he was court-martialed on various charges and specifications. There were seven officers detailed for this trial, who assembled at the time and place named in the order. The accused and the judge-advocate declined to challenge any one of the detail, and the court was accordingly organized with seven members, and proceeded with the trial. On the sixth day of the trial one of the members of the court was excused from further attendance on account of sickness, and at the same time the judge-advocate challenged the

president of the court because he believed him to be favorably disposed toward the accused. The accused objected to the court entertaining the challenge, declaring the judge-advocate's motion to be in violation of all law and precedents governing criminal trials both in civil and military courts, and especially repugnant to the eight hundred and eighty-ninth paragraph of the Army Regulations, which declares that "the seventy-sixth article of war does not confer on a court-martial the power to punish its own members."

Notwithstanding this objection of the accused the court determined to entertain the challenge, and on further motion of the prosecution it ordered the accused and his counsel to be excluded from the court-room, and, with closed doors, spent nine days in trying the challenge, when, in open session, it sustained the challenge, and, dismissing the president, proceeded with five members to the conclusion of the trial, when it pronounced the sentence of dismissal against the accused.

When this action of the court came before the department commander who had ordered the court, for his review and official action, he said of it:

The action of the court in declaring the seat of General Mower vacant after he had been duly sworn to properly try the case, and the trial had commenced, was a fatal error in its proceedings.

In view of the fact that the charges were not fully sustained by the evidence, that the court was unquestionably disorganized by the entirely illegal expulsion of the president and incapable of pronouncing a valid sentence, and the fact that the act of July 13, 1866 (Statutes at Large, vol. 14, p. 92), declares that "no officer in the military or naval service of the United States shall, in time of peace, be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof," and of the exceptionally good war record of this officer, your committee report the accompanying substitute for said bill (H. R. 3140), and recommend that it be passed.

FRED. H. E. EBSTEIN.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. WHITE, from the Committee on Military Affairs, submitted the following

## REPORT:

[To accompany bill H. R. 3252.]

*The Committee on Military Affairs, to whom was referred the bill (H. R. 3252) for the relief of Frederick H. E. Ebstein, first lieutenant Twenty-first Infantry, United States Army, having considered the same, submit the following report :*

On January 8, 1873, Lieutenant Ebstein, then acting commissary of subsistence at Camp San Juan, San Juan Island, Washington Territory, in obedience to the order of the chief commissary of subsistence of the Military Department of the Columbia, delivered to Maj. John S. Walker, Paymaster, U. S. A., \$400 of subsistence funds. With these funds in his possession, Major Walker took passage on the steamer George S. Wright. Before reaching her destination, the Wright was wrecked off the coast of British Columbia, and Major Walker and the funds were lost. The matter was investigated by a board of survey, which, under special order of the military department, convened at Portland, Oreg., August 11, 1873, for that purpose. Major Walker's receipt and an affidavit of the commanding officer at Camp San Juan, in whose presence the funds were delivered to Major Walker, were filed in evidence before the board. After a thorough examination, the board fully exonerated Lieutenant Ebstein from all blame for the loss. On receipt of this report, the then Secretary of War, in a communication to this House, of December 4, 1873, transmitted the draft of a bill for the relief of Lieutenant Ebstein similar to the one under consideration, and recommended its passage. This recommendation was renewed by him on February 26, 1876, and again by his successor on April 8, 1876. This bill was favorably reported from the Committee on Military Affairs to the House during the last session of the Forty-fourth Congress; was placed on the Private Calendar, and passed, but failed to pass the Senate for lack of time to consider it. Secretary of War McCrary, on January 31, 1879, in a special letter to this House again recommended the passage of the bill, "as a simple measure of justice."

Concurring heartily in this view, your committee respectfully report back the bill with the recommendation that it pass. Your committee, however, recommend an amendment at the end of the bill: Add after the word "infantry," in sixth line, the words *upon satisfactory proof of* as furnished by him.



**PORT OF DELIVERY AT TAMPA, FLA.**

**MARCH 31, 1880.**—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

**Mr. ACKLEN**, from the Committee on Commerce, submitted the following

**REPORT:**

[To accompany bill H. R. 5540.]

*The Committee on Commerce, to whom was referred the bill (H. R. 1025) making the port of Tampa, in the State of Florida, a port of entry and delivery, report as follows:*

**The bill referred to your committee reads as follows:**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the port of Tampa, in the county of Hillsborough, in the State of Florida, be, and the same is hereby, made and declared to be a port of entry and delivery.*

**After an examination of such facts as your committee deem pertinent to this case, and believing that the interests of commerce are to be furthered by having a deputy collector at that port, your committee report back the accompanying substitute and recommend its passage.**



**46TH CONGRESS, }  
2d Session. }**

**HOUSE OF REPRESENTATIVES, { REPORT  
No. 683. }**

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**MUNICIPAL CODE FOR THE DISTRICT OF COLUMBIA.**

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**MARCH 31, 1890.**—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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**Mr. HUNTON**, from the Committee for the District of Columbia, submitted the following

**R E P O R T :**

[To accompany bill H. R. 5541.]

**The Committee** for the District of Columbia, to whom was referred **bill H. R. 3991**, have had the same under consideration, and beg leave to report therefor a substitute, and recommend that the substitute be adopted.

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## HEIRS OF WILLIAM A. BURT.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CONVERSE, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 2689.]

*The Committee on the Public Lands, to whom was referred a bill for the relief of the heirs of the late William A. Burt, inventor of the solar compass adopted and used in the public surveys of the United States, report:*

That in their investigation of the question involved in the consideration of the merits of this bill, they have ascertained the existence of the following facts, viz: That William A. Burt, then a surveyor in the service of this government, and being satisfied that from his experience and knowledge as a surveyor of the inability of the common magnetic compass, then in use in running lines of any considerable length in a wilderness country, and especially where local attraction existed, as it does in a very large proportion of our then unsurveyed lands, turned his attention in, and previous to, the year 1835 to the invention of an instrument to be used in surveying, which should act independently of magnetic attraction. Mr. Burt so far perfected an instrument answering this end that in 1836 he obtained a patent for his invention known as Burt's solar compass, and immediately brought it into use in the government surveys; but for several years thereafter continued to make improvements in said instrument, until it has finally reached its present state of perfection, and during all its stages of improvement, from the first rude model to the present time, was used by the government in its surveys of all mineral regions of Michigan, Wisconsin, Iowa, Arkansas, Utah, Texas, Minnesota, Oregon, California, Nevada, and all mineral districts of the United States, which surveys could only have been made at great additional cost without it, and but imperfectly at any cost.

It appears from statements deemed reliable, made to your committee, that Mr. Burt derived very little pecuniary benefit from his invention, for the reasons, among others, that a large portion of the time covered by his patent was consumed in perfecting the instrument, thereby making it available for the use of all persons unaccustomed to it, and the additional cost of it over that of the ordinary magnetic compass requiring a greater outlay than local surveyors were willing to make, operated to prevent its coming into general use except in the government surveys; and Mr. Burt chose rather to rely on the justice of the government to compensate him for the time and labor bestowed upon it than to refuse its use, as under his patent he might have done.

That the solar compass is a great and much needed improvement upon

the common one previously in use, and occupies a prominent place among the important inventions of the age in the opinions of officers of the government, scientific and practical men, is evident by their freely expressed opinions upon the subject, some of which your committee introduce here to your notice as worthy of consideration, marked A, B, C, D, E, and are made part of this report.

From the foregoing statements your committee are satisfied that Mr. Burt expended much time and money in inventing and perfecting an instrument which has become almost indispensable in making the surveys of the public lands; that he received no remuneration from the government for its use, and very little from individuals—less, it is believed, than \$300; and believing it right and just that the government should make a fair remuneration to its citizens for the labor and property converted to its use, and believing that the sum proposed is very far short of actual pecuniary benefit the use of the instrument has been to the government, and in view of the long delay of the government after application from the inventor for a just and reasonable compensation for its use in the public surveys, and the great improvement in the character of the public surveys growing out of its use, through the efforts of the inventor during his lifetime, and the great saving to the government for the *past*, which the claimants estimate to be not less than \$10,000,000, and possibly double that amount, and the fact that he received not more than one-half the price since and now being paid by the government for such work, as shown by the reports of the Commissioner of the General Land Office, herewith submitted, your committee are of the opinion that a liberal allowance should be made the heirs of the inventor of the compass and promoter of improvements in this branch of the public service, but prefer and most respectfully ask that such amount be inserted in the bill, herewith returned without recommendation as to amount, as may be agreed upon in Committee of the Whole House.

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A.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., January 30, 1880.*

I, J. M. Armstrong, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter dated March 3, 1852, addressed by the Commissioner of the General Land Office to Hon. A. Felch, chairman of the Senate Committee on Public Lands, is a true and literal exemplification of the official record of said letter.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

J. M. ARMSTRONG,  
*Acting Commissioner of General Land Office.*

BURT'S SOLAR COMPASS.

Hon. A. FELCH,

*Chairman of the Committee on Public Lands, Senate:*

GENERAL LAND OFFICE, *March 3, 1852.*

SIR: In reply to your letter of inquiry of 10th ult., referring to this office for report thereon the subject-matter of the memorial of Wm. A. Burt, praying for remuneration from the government for the benefit resulting to the public surveying service from the use of his improved solar compass, of which he claims to be the inventor, I beg leave to state that in the mineral regions of Lake Superior, and elsewhere, where the local attraction is such as to render the ordinary compass a useless thing, said solar compass has proved of inappreciable utility. In the mineral regions of Michigan, Wisconsin, and Arkansas it is estimated that 31,104 miles (9,953,280 acres) of public surveying were

accomplished by it, at a maximum cost of \$186,624, which, without its discovery and use in said service, could not have been surveyed without resorting to the tedious processes involved in the use of transit and other instruments, causing delays in the execution of the work, and proportionably swelling the costs of the public surveys of the same body of lands to an estimated amount of at least \$622,080, and possibly a great deal more; that is to say, to \$20 per mile (instead of \$6), and possibly double the former amount.

Mr. Burt is understood to have been fourteen years in aiming to perfect his invention, and the measure of compensation claimed is one mill on the acre for the results attained by means of the use of his instrument whenever it was of such indispensable and so economical advantage to the public land-surveying service. Such allowance, based on the aggregate amount of acres specified, would amount to \$9,952 for all the past.

As regards the future, Mr. Burt claims the extension of same allowance to twenty-one years from date of his patent, 25th February, 1836, which would reach 25th February, 1857.

It may suggest itself to the minds of some that the rate of compensation if so provided would be uncertain and indefinite; if so, provision might be made that the present and future allowance should not, together, exceed ——— thousand dollars.

The solar compass has been introduced as aforesaid into the surveying service in the northern peninsula of Michigan, where it is positively stated that the local attraction is such that the land could not have been surveyed without it. It has also been introduced into the survey of the mineral regions of Arkansas, & in Wisconsin, where the variation is very *changeable*. It has also been introduced into the surveying service of California & Oregon, by special order of this office; & the surveyor-general of Oregon reports that—

“There is considerable local attraction found to exist throughout the whole country, so much that the magnetic needle cannot be depended upon in making the surveys. Burt's Improved Solar Compass has been used in all the lines that have been and are being surveyed, and it is found to be an admirable instrument—in fact, the only one that can be used to advantage in the surveys on this coast.”

The variation in Oregon is reported by the Coast-Survey to range from 15° to 21' E., and in the interior the local attraction amongst the mountains may be expected to exceed that degree of variation.

Hence, it will be perceived that the “solar compass” is to be depended upon exclusively in Oregon as the only instrument calculated to insure anything like accurate results at any moderate cost to the government; and the same may be said of California, where the variation, so far as ascertained, is represented to range between 15° & 16' E.; and, in fact, it is, by the recommendations of surveyors-general, supplanting the use of the common compass throughout the public surveys, it being found the most servicable instrument under ordinary circumstances even in Florida, where the variation is not great.

Regarding the request made in your letter as involving the opinion of this office as to the value of that instrument in the future as well as in the past to the public-land surveying service, I hesitate not to express my belief that it is indispensable to the accurate surveying of a *large* portion of the unsurveyed public domain on the Atlantic, as well as in Oregon, California, Utah, & New Mexico; and that it will save a very considerable amount of public expenditure which can only be estimated at many hundreds of thousands of dollars. In view of all which considerations, this office would consider an allowance to the inventor of some fifteen or twenty thousand dollars to be but a small consideration in comparison of the vast saving of public expenditure and the valuable & accurate results accruing from the use of that instrument in the surveying service.

By means of that instrument the true meridian according to which the public lands are ordered to be surveyed can be ascertained at any time when the sun shines.

The “solar compass” has passed through successive stages of improvement during many years, and by the present mode of adjustment the inventor claims for his instrument the power of promptly determining the latitude with a degree of accurate approximation sufficient for all practical purposes in ordinary surveying.

The transcendent merits of this instrument, however, in public-land surveys consists in the facility with which it determines the true meridian from which, by the mechanical construction & graduation of the compass, any and all angles or courses may be determined.

Thus the surveyor, by a simple operation, is enabled to arrive at accurate results, and whatever may be the local causes surrounding him, which but serve to distract the operator with the ordinary compass, he is by this instrument enabled promptly to proceed in his labors without any misgivings, delays, or interruptions.

Subjoined are references to high testimonials, amongst many others that doubtless could be adduced, to the merits of Mr. Burt's instrument, and these are marked A, B, C, & D. They are from Professor Locke, from Messrs. Foster & Whitney & Charles

Whittlesey, geologists, who explored the Lake Superior mineral region, and from Jno. B. Preston, esq., the Surveyor-general of Oregon, where the instrument has been introduced into the surveying service by direction of this office.

The paper marked E is from Mr. M. J. Young, of Philadelphia, the maker of the instrument under authority of Mr. Burt, showing that the inventor has, as yet, received no remuneration worth naming from the public for the use of his instrument, which, it is understood, he has spent a great amount of time, labor, pains, & money to bring to its present state of perfection.

With great respect,

J. BUTTERFIELD,  
*Commissioner.*

#### TESTIMONIALS.

Amongst many testimonials that could be adduced in regard to the merits of the solar compass are the following:

A.—From Professor John Locke, Boston, April 18, 1850: "In many parts of the Lake Superior region local attractions are such, that the magnetic needle would have been of no use whatever, for I have seen it point not only at right angles to the meridian, but absolutely inverted by the north end pointing to the south," &c. &c.

B.—From Charles Whittlesey, esq., geologist, Lake Superior region: "Here the deflection of the needle from local causes is such as to render perfectly useless a magnetic compass, being sometimes 180 degrees in the distance of a mile. Without some instrument that acts independent of magnetism, the region could not have been surveyed, & the theodolite transit, &c., cannot do it at anything like the prices limited by law.

C.—Messrs. Foster & Whitney, United States geologists, bear the strongest testimony to the excellence and value of said instrument in their final report about to be published by order of Congress. Mr. Foster has furnished a paper containing his written testimony to accompany this report, wherein he alludes to what is stated in regard to the merits of the solar compass in F. & W.'s Geological Reports, thus:

"Transcripts which are given below show variations of 30°, 45°, and 175° in the distance of half a mile. Without the solar compass the region could not have been surveyed, except at a cost exceeding the value of the land."

D.—Is an extract from a late report from I. B. Preston, the surveyor-general of public lands in the Territory of Oregon, bearing testimony to the indispensable utility of Burt's solar compass in surveying the public lands in that Territory.

B.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., February 11, 1880.

I, J. M. Armstrong, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter addressed by the Commissioner of the General Land Office to the Hon. David T. Disney, chairman of the Committee on Public Lands, House of Representatives, dated February 16, 1854, is a true and literal exemplification of the official record of said letter.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

J. M. ARMSTRONG,  
*Acting Commissioner of General Land Office.*

GENERAL LAND OFFICE,  
February 16, 1854.

Hon. DAVID T. DISNEY,  
*Chairman Committee Public Lands, House of Representatives:*

SIR: The resolution of the Committee on Public Lands of the House of Representatives of 14th instant, requesting this office to furnish any information in its possession "in relation to the use and value of Burt's Solar Compass," has been received, and in answer I have the honor to transmit a copy of the report of my predecessor, of the 3d March, 1852, on the subject to the Hon. A. Felch, chairman of the Senate committee.

I would further state that in this opinion I entirely concur. Without an examination of this instrument, and the use of it where local attraction exists, it is almost impossible to appreciate its excellence.

ected on the most accurate principles of science and mechanics, it may be re-  
almost self-adjusting, for when arranged so that the sun's rays, condensed  
s, pass exactly between the parallel lines on the plate below, the arm on  
lens and plate are fixed move precisely in the sun's path, the sights of the  
re exactly due north & south, and the latitude of the spot on which the  
t stands is given with great, and for all ordinary purposes sufficient, ac-  
s evidence of this fact I would state that Col. Talcott, the astronomer who  
d the northern boundary of Iowa, assured me that the discrepancy between  
a or trial line run with Burt's compass and this boundary as fixed by as-  
observations was so slight, that the two could not be shown in juxtaposi-  
largest scale that could be presented, and that the only material variation  
short distance, where the deputy ran the random line with an ordinary com-  
poudy weather, and that as soon as Burt's compass was again used that varia-  
corrected.

d by my predecessor, the mineral lands in Michigan, Arkansas, and several  
s, and all the lands in Oregon, California, Utah, and New Mexico, without  
ment, could only have been surveyed at a cost of time and money three or  
greater than is required with it. In fact, the use of this compass has in-  
new era into the public surveys, and has rendered highly interesting and  
tick before that time was simply laborious.

ossible to ascertain the amount of lands that have been surveyed with this  
nce the previous report from this office; it is believed, however, that it  
unt to about 1,900 miles.

has heretofore been saved to the government, it is believed that it is not to  
d to the benefits that will be derived from it in the future, and I earnestly  
that a liberal allowance be made for its use.

irst examined Burt's compass, I was without explanation of its construction  
any source, yet in a few moments I was enabled to adjust it without know-  
itude of the place or having reference to a nautical almanac to ascertain  
declination. The latter, however, would be necessary in determining the  
ude of the place.

entor, Judge Burt, of Michigan, has been a deputy surveyor of the U.  
many years, and so great is the confidence justly placed in his skill and un-  
le integrity by the department and the people of the Northwest, that his  
ny question of surveys has always been considered as conclusive.

labored long and faithfully to bring this compass to perfection, and frankly  
ly gave the benefit of it to his country; and it will require a large allow-  
to pay him for the time, labor, and money he expended on it.

which is most respectfully submitted.

respectfully, your ob't serv't,

JOHN WILSON,  
*Commissioner.*

C.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., January 24, 1880.*

Armstrong, Acting Commissioner of the General Land Office, do hereby cer-  
the annexed copies of letters from this office, dated respectively December 31,  
January 8, 1878, addressed to John Burt, are true and literal exemplifica-  
to official record of said letters.

mony whereof I have hereunto subscribed my name and caused the seal of  
to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,  
*Acting Commissioner of General Land Office.*

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., Dec. 31, 1877.*

T, Esq.,  
Michigan :

reply to the inquiries in your letter of the 25th instant I inclose herewith a  
Manual of Surveying Instructions and Supplement.

ge 8 of the Manual you will find the requirements as to the instruments to  
the survey of the public lands.

respectfully,

J. A. WILLIAMSON,  
*Commissioner.*

On page eight the following instructions are found: "Where uniformity in the variation of the needle is not found, the public surveys must be made with an instrument acting independently of the magnetic needle. Burt's *Improved Solar Compass*, or other instrument of equal utility, must be used in such cases, and it is deemed best that such instrument should be used under all circumstances. Where the needle can be relied on, however, the ordinary compass may be used in subdividing and meandering. We find in the same Manual: "Remark 2. The variation of the needle should always be noted on every survey made with the compass, and then, if the land be surveyed at a future time, the old lines can be re-run." We find, also, in same Manual, page thirty-two, specimens of field-notes: "A. Contract dated January 2, 1854. Section boundary T. 25 N., R. 2 W., Willamette meridian east on random line on the southern boundary of sections 31, 32, 33, 34, 35, and 36. Variation by 'Burt's Improved Solar Compass,' 18° 41' east. Here follows the survey of this exterior township boundary line, and so on until the survey of the township is complete. Dated January 25, 1854.

The Commissioner of the General Land Office, in his report for 1875, twenty-five years after the adoption of the "solar compass" as the standard instrument in the public surveys of the United States, says: "The chain and solar compass are the principal instruments of execution."

The Commissioner of the General Land Office, in a letter under date of January 1878, says: "I have to state that from January 1, 1849, to June 30, 1877, there were surveyed 409,572,733 acres." Reduce this to miles, and it makes 1,279,914 miles surveyed between these dates.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., Jan'y 8, 1878.

JOHN BURT, Esq.,  
Detroit, Michigan:

SIR: In reply to your telegram of the 7th instant, inquiring the area of lands surveyed since 1849, I have to state that from January 1, 1849, to June 30, 1877, there were surveyed 409,572,737 acres.

Very respectfully,

J. A. WILLIAMSON,  
Commissioner.

D.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., February 20th, 1878.

JOHN BURT, Esqr.,  
Washington, D. C.:

SIR: I have received your letter of the 8th inst. requesting information in regard to the survey of principal bases, meridians, and guide meridians since 1836; the boundary lines between the States of Michigan and Wisconsin and the northern boundary of Iowa; also asking for tracings of plats of township 47 N., R. 27 west, and townships 54 and 56 N., range 33 west, of Michigan meridian, with statement by whom said surveys were made, and the respective costs of the same.

In reply I have to say that the records in this office show that there have been surveyed and marked in the field numerous surveying bases and principal meridians in different surveying districts since the year 1836, generally surveyed with the Burt's solar compass and other instruments operating independently of the magnetic needle, but as to the actual cost of such lines established at various times by sundry surveyors it would require considerable labor on the part of the clerical force of this office to arrive at the desired result in this particular.

Upon examining records with regard to other items of your enquiry, I have to give you the following statement, to wit:

The boundary line between Michigan and Wisconsin was surveyed by William A. Burt under his contract of April 27, 1847, the length of the boundary 64 miles 24.5 chains, and the cost of the survey \$1,000.

The northern boundary of Iowa was surveyed by Andrew Talcott, under instructions from the surveyor-general of Wisconsin and Iowa, its length 268 miles 65.5 chains; it was completed in the year 1853 at the cost of \$32,277.73, including the sum of \$1,657.69, the expenses incurred in determining astronomically the initial point of the intersection of the 43° 30' of north latitude, with the Mississippi River, by Capt. Thomas J. Lee, of Topographical Engineers.

compliance with your request, I inclose herewith tracings of the follow-

ing:  
N., R. 27 W., Michigan, the survey of this township was made by John  
deputy surveyor, under his contract of Feb'y 23, 1849, involving 70 miles  
of linear measure, at the rate of \$6 per mile. Tp. 55 N., R. 33 W., was  
D. Houghton under his contract of June 25, 1845, the extent of subdivis-  
being 68 miles 58<sup>1</sup>/<sub>4</sub> chains, at the rate of \$5 per linear mile, and  
R. 33 W., surveyed by D. Houghton under his contract of June 25, 1844,  
ional survey amounting to 60 miles 75<sup>1</sup>/<sub>4</sub> chains, at the rate of \$5 per mile.  
very respectfully, your ob't serv't,

J. A. WILLIAMSON,  
*Commissioner.*

E.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., March 2, 1880.

Esq.,  
ington, D. C. :

ply to your letter of this date requesting a comparative statement of the  
n allowed U. S. deputy surveyors during the ten years from 1840 to 1850,  
s paid during the present decade, I have to state as follows:  
mination of the records it is ascertained that the rates allowed from 1840  
ed from \$2.75 to \$6.00 per linear mile, with a very limited amount of work  
r Peninsula of Michigan at \$8.00 per mile. The lower rates were paid for  
of prairie and other lands, where the lines could be extended without dif-  
e higher rates were paid for the survey of timbered and mountainous lands,  
work was often difficult of execution and where, as in Northern Michigan,  
cal attraction, the surveys could be made only with the aid of the solar

e past ten years the lowest rates per mile were those allowed in Kansas,  
were \$10.00 per linear mile for standard lines, \$6.00 for township lines,  
r section lines. These rates were confined exclusively to the prairie coun-  
no difficulties were met with by the surveyor. In the mountainous and  
regions the rates have varied from \$15.00 for standard lines, \$12.00 for town-  
0.00 for section lines, to \$18.00 for standard lines, \$16 for township, and  
ction lines.

to account the fact that by far the greater portion of the recent surveys  
at the medium rates given above it will appear from the foregoing that  
allowed during the past ten years are somewhat more than double those  
n 1840 to 1850.  
respectfully,

J. W. ARMSTRONG,  
*Acting Commissioner.*

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GEORGE HEARD.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CONVERSE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill S. 309.]

*The Committee on the Public Lands, to whom was referred Senate bill No. 309, have had the same under consideration, and submit the following report:*

The bill directs the proper officers of the Interior Department to prepare and cause to be issued and delivered to George Heard, assignee of Chester Hebner, a bounty-land warrant in lieu of bounty-land warrant No. 61178, burned and destroyed.

From the testimony submitted, the committee find Mr. Heard to be 70 years of age and has been a trustworthy citizen of Pettis County, Missouri, since 1835.

About 28 years ago he entered, at different times, several tracts of land at the Clinton, Mo., land-office on bounty-land warrants, under the act of February 11, 1847.

The tract in question, 166.88 acres, was entered June 8, 1852, by Mr. Heard, on a warrant issued to one Chester Hebner, he paying at the time for the excess of said land at the rate and price fixed by law.

The said land warrant (the transfer of the same being in blank), with the application of said Heard to locate the same upon said lands, were duly forwarded to the General Land Office in Washington, D. C., and were returned to the Clinton, Mo., land-office, October 26, 1852, to have the assignment perfected, but said Heard was not notified of the return, and could not, therefore, make the correction, and did not know of the defect in the assignment until the year 1878. During this time the records and papers belonging to said Clinton office were removed to the office at Warsaw, Mo.; and during the late rebellion all the records and papers belonging to both of said offices were totally destroyed by fire.

Mr. Heard, it seems, with the number of patents he held, neglected to look after and failed to discover that he had no patent for the lands described in the bill, he having, in all these years, rested in the belief that his title was perfect, until a Mr. Doty, one of the grantees of a portion of the tract, in endeavoring to effect a loan of money, discovered that no patent had been obtained.

Chester Hebner having died or disappeared before the defect in the assignment was made known, there could be no possible relief or benefit to said Heard to have a reissue of a land warrant in the name of Hebner.

On the 11th of July, 1878, the said George Heard was permitted to,

and did, substitute at the General Land Office \$200, in lawful money, in lieu of the said lost or destroyed warrant, which sum was paid into the Treasury of the United States; and on the 6th of August, 1878, in virtue thereof, the said location, originally made as above set forth, was patented to the said George Heard.

At the time of the attempted location of said land warrant in 1852, said Heard took actual possession of the land described therein, erecting his mansion thereon, cultivating and improving the same, and has ever since remained in open and undisputed ownership up to the present time.

The committee believe that a general bill should be introduced to authorize the Commissioner of the General Land Office to act for the relief of this class of cases, but inasmuch as this one passed both the Senate and House in the Forty-fifth Congress, and only failed to become a law for lack of the President's signature, they report back the bill and recommend the passage of the same.

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**46TH CONGRESS, }  
2d Session.**

**HOUSE OF REPRESENTATIVES.**

**{ REPORT  
No. 686.**

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**MONROE DONOHO.**

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**MARCH 31, 1880.**—Committed to the Committee of the Whole House and ordered to be printed.

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**Mr. CONVERSE**, from the Committee on the Public Lands, submitted the following

**R E P O R T :**

[To accompany bill H. R. 1713.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 1713) for the relief of Monroe Donoho, have had the same under consideration, and submit the following report :*

The claimant was register of the United States land-office at Tuscaloosa, in the State of Alabama, until the 28th February, 1861, and it appears from an account stated by J. A. Williamson, Commissioner of Public Lands, on the 3d day of May, 1877, that the government was indebted to the claimant on account of salary and commissions in the sum of \$169.45, which amount the Commissioner recommends be paid to him.

The committee report the bill back with the recommendation that it pass.

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**DRURY BYNUM.**

**MARCH 31, 1880.**—Committed to the Committee of the Whole House and ordered to be printed.

**Mr. CONVERSE**, from the Committee on the Public Lands, submitted the following

**R E P O R T :**

[To accompany bill H. R. 1531.]

The Committee on Public Lands, to whom was referred the bill (H. R. 1531) for the relief of Drury Bynum, have had the same under consideration, and report it back and recommend its passage.

The bill provides for paying to Drury Bynum the sum of \$35 for his services as register of the land-office at Paulding, Miss.

Upon reference of the bill to the Commissioner of the General-Land Office we find, by the reply of that officer, the following facts: That Bynum was register of the land-office at Paulding, Miss., in the year 1861; that for the fractional quarter of the year ending January 10, 1861, it appears that an account was stated in favor of Mr. Bynum, by which he was entitled to a balance of \$35 for the fractional quarter above alluded to. The account was referred to the First Comptroller of the Treasury for official action thereon.

The committee are satisfied that the amount is due, and as it simply requires an appropriation for final settlement, the committee have, therefore, recommended the passage of the bill.



**L. L. RICE.**

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**MARCH 31, 1880.**—Committed to the Committee of the Whole House and ordered to be printed.

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**Mr. CONVERSE**, from the Committee on the Public Lands, submitted the following

**R E P O R T :**

[To accompany bill H. R. 519.]

*The Committee on the Public Lands, to whom was referred House bill No. 519, have had the same under consideration, and submit the following report :*

It appears from information furnished that on the 3d of April, 1858, land-warrant No. 79099 was issued, under the act of March 3, 1855, to Mrs. Elizabeth Heath, widow of Amos Heath, who sold and assigned the said warrant in June, 1859, to L. L. Rice; and in consequence of the said land-warrant being stolen from the said L. L. Rice and fraudulently used, it was duly canceled and a duplicate of the same was issued to the said Mrs. Elizabeth Heath, who was prevented by death from making a reassignment of the said warrant to the said L. L. Rice.

The committee are of the opinion that under the circumstances, cancellation of the original at the department, and L. L. Rice being the proper owner thereof, he should have the relief sought, and therefore report back the bill and recommend the passage of the same.





## CEDING CERTAIN LANDS TO OHIO.

MARCH 31, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. CONVERSE, from the Committee on the Public Lands, submitted the following

### R E P O R T :

[To accompany bill H. R. 580.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 580) to construe and define "An act to cede to the State of Ohio the unsold lands in the Virginia military district in said State," approved February 18, 1871, having had the same under consideration, report as follows:*

The object and purpose of this bill is to quiet the title to lands in favor of the occupants of surveyed and appropriated lands in what is known as the Virginia military district, in Ohio. The State of Virginia, by her deed of cession of the northwest territory, reserved the lands lying between the Scioto and Little Miami Rivers in that State for the satisfaction of the bounty in land she had promised her soldiers in the revolutionary war in the Regular Army. These lands were taken up from time to time, beginning in 1787, by making "entries for survey;" then surveys; and, when the proper papers were forwarded to the proper department here, patents were issued. Congress from time to time, beginning in 1804 and continuing on down to 1857, fixed and extended the time for locating military warrants, making surveys, &c., but in many instances the warrants were located, the surveys made, the land taken possession of, and sales made without the proper returns being made or patents being issued; and there remain to-day many farms, which have been tilled and taxed many years, yet unpatented.

The system has been productive of much litigation, and the act of 1871, which it is now sought to construe, threatens to still further increase litigation and disturb not only the original entries and occupants but their descendants as well as innocent holders.

The act of 1871 ceded to the State of Ohio all the unsold public lands, and the legislature of that State thereupon ceded such lands to the Mechanical and Agricultural College of Ohio. The trustees of that college began a system of search for unpatented lands, and where the entry and survey originally made contained more land than the warrant called for they claimed that the title was in the college by virtue of these acts.

The effect was to threaten eviction from portions of old settled farms of the occupants. But so general was this disturbance that the authorities of the college have in their report of January, 1877, disclaimed any further intention to "make pursuit after surplus in any survey," or "to place obstacles in the way of completing such titles," and "declined to

make any further advances, or incur any further expenses in the reclamation" of such lands.

Your committee find also that at the time the act of 1871 was under consideration it was clearly stated in the debate that it only referred to *unappropriated vacant lands*, and that the lands sought to be taken by the college were not intended to be included in the act. This being clearly the case, and the further fact that the college has withdrawn its claim to such lands, your committee believe it right and just that this bill should pass and so enable these equitable titles to be perfected. Nothing can be done in this direction without the passage of this bill, for the reason that the land office has construed the act of 1871 against the equities of the occupants, and decided to withhold the issuing of patents until the controversy is settled by legislation interpreting the act of 1871 as provided in this bill.

It is estimated by the General Land Office that between 20,000 and 30,000 acres of land in said district apportioned among several hundred surveys are still outstanding and unsatisfied, never having been patented. The difficulty is a very serious one to many of the farmers in that district, and your committee believe that the passage of this bill will remedy the trouble and give general satisfaction.

Your committee recommend that the bill be amended by striking out of lines 9 and 10, of section 3, the words "of the principal surveyor of said district," and insert in lieu thereof the words *of the commissioner of lands*, and when so amended that the bill do pass.

SAMUEL BAKER.

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MARCH 31, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CONVERSE, from the Committee on Revolutionary Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5542.]

*The Committee on Revolutionary Pensions, to whom was referred the petition of Samuel Baker, for an increase of pension, have had the same under consideration, and report :*

That Mr. Baker is now of the age of eighty-eight years. He was a soldier of the war of 1812, engaged in several hard-fought battles which shed a brilliant lustre upon American arms and prowess, and was wounded, from the effects of which he suffers to this day, although the wound was not of that character as to prevent him from engaging in the ordinary avocations of life. A brief statement of military services is as follows:

He was mustered into the military service of the United States as second sergeant of a company of volunteers commanded by Captain Dunn, in February, 1814, at London, Franklin County, Pa. From there he marched to Erie, Pa.; from that point to Put-in Bay to guard some vessels which had been captured from the British. These vessels were taken to Erie by the detachment of which Mr. Baker was a member. From thence he went with a detachment under the command of Colonel Campbell to destroy a quantity of military stores and provisions which the British were reported to have accumulated at Long Point. There they destroyed a large distillery and burned the town of Dover and returned to Erie. His regiment then joined the Federal Army under the command of General Brown, at Buffalo; they crossed over into Canada, captured Fort Erie, participated in the battle of Chippewa, and the military operations which preceded and succeeded that famous and important battle, and was injured during those operations by having his horse fall upon him, it being struck and instantly killed by a cannon-ball. He also participated in the battle of Lundy's Lane. In short, he actively engaged in all the military operations of the Federal Army, under the commands of Generals Jesup, Ripley, and Scott, until August, 1814, when he returned to Erie, Pa., and was mustered out of the service.

In view of the great age of the petitioner, the important and valuable services he rendered his country in the hour of need and peril, and his present indigent circumstances, your committee are of opinion Congress should regard favorably his petition, and therefore report the accompanying bill, recommending its passage.



## PACIFIC RAILWAY SYSTEM.

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APRIL 1, 1880.—Recommended to the Committee on the Pacific Railroad and ordered to be printed.

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Mr. CHALMERS, from the Committee on the Pacific Railroad, submitted the following

### REPORT:

[To accompany bill H. R. 5543.]

Your committee having had under consideration the bill (H. R. 468) to complete the system of Pacific Railways, beg leave to report back a substitute therefor, which is herewith presented.

House bill 468, which was referred to us, contemplated the completion of the Texas and Pacific Railway, the Southern Pacific Railway, and the Northern Pacific Railway, to which grants of land were heretofore made, and also the construction of several other railroads named in said bill to which no government aid of any kind has been heretofore given. The aid asked in said bill for the completion and construction of the roads therein named was of two kinds. One the absolute grant of alternate sections of the public lands lying on both sides of the railroads to be constructed; the other, the loan of United States credit in the indorsement by the government of the payment of the interest on the bonds to be issued by the railroad corporations. The latter aid being asked where the roads to be constructed did not run through public lands belonging to the United States, or where the lands granted were not of sufficient value to insure the necessary aid required for the construction of the road.

Your committee sympathize with the general object of the bill, and concur in the belief that it is the duty of the government to aid in the completion of the Pacific Railway system so far as the same can be legally accomplished, but do not concur in the details of said bill.

The policy of granting government aid to construct railroads through the public lands by giving a certain number of alternate sections on each side of the roads has been fully justified by the great benefits we have received from the rapid growth and extraordinary development of our country through the instrumentality of railroads. But experience has demonstrated that far more aid has been given in many cases than was necessary, and that in some instances a generous, liberal, and confiding government has been overreached and defrauded by the machinations of unscrupulous men.

Your committee find that about 187,000,000 acres of public lands have been granted to railroad companies, of which they have obtained title by construction of their roads to about 80,000,000 acres.

The probable cash value of these lands to the railroads, as near as we can estimate it, is about \$200,000,000, of which the roads have already realized by sales of their lands about \$60,000,000. If the policy we now

recommend of making loans instead of donations to these roads had been pursued in the beginning, we would now have accumulated a princely sum for public improvements, while the railroads that have been built would just as easily have been secured for the improvement of the country. Your committee believe that the sentiments of our people still favor the policy of giving such reasonable government aid as may be necessary for the construction of as many lines of railway through the public lands, which private capital is unable or unwilling to construct, as the wants of commerce and the interest of the government may demand. They believe further that the most equitable as well as the most unquestioned legal mode of giving such aid is by disposing of the alternate sections of public lands through which these roads may run.

But public opinion has been outraged by enormous and unnecessary grants of public lands equal to principalities and empires of the old world, and your committee think it is time that the policy of the government should be changed upon this subject, and, therefore, they have reported a substitute for H. R. 468 which will give reasonable aid to complete the Pacific railway system and at the same time preserve the avails of the public lands for public use.

Your committee find four great transcontinental lines now in process of construction: The Northern Pacific, the Atlantic and Pacific, the Southern Pacific, Texas and Pacific, and that large grants of land have been made to these railroads as follows:

	Acres.
Northern Pacific .....	43, 000, 000
Atlantic and Pacific .....	42, 000, 000
Southern Pacific .....	10, 500, 000
Texas and Pacific .....	18, 000, 000
Total .....	113, 500, 000

The right of said companies to acquire title to these lands was made dependent upon the performance, by them, of the conditions named in their respective charters, one of the most vital of which conditions was that the roads should be commenced on a day named in the respective charters, and that fifty miles per year after the second year should be completed of said roads.

About 10,500,000 acres—as estimated by the company—were granted to the Southern Pacific Railroad Company, of California; the estimate of the General Land Office is 9,500,000 acres. Earned, by building of road for 581 miles, were 7,436,800 acres, leaving about 3,000,000 acres liable to forfeiture.

About 42,000,000 acres were granted to the Atlantic and Pacific Railroad Company, of which the road has earned about 1,164,800 acres, by construction of 91 miles of road, leaving liable to forfeiture about 40,835,200 acres.

About 43,000,000 acres were granted to the Northern Pacific, of which the road has earned about 10,579,200 acres, leaving liable to forfeiture about 32,420,800 acres.

That the grants to the three first-named railroad companies have lapsed there can be no question; whether they are now subject to forfeiture has been questioned. Upon this subject a report to the Secretary of the Interior (see Senate Ex. Doc., No. 88, second session, Forty-sixth Congress, dated February 11, 1880, from the acting Commissioner of the General Land Office, page 4), says:

The only remaining grants to be considered are those to the Northern Pacific, Atlantic and Pacific, and Southern Pacific (main line) Railroads. These grants are anomalous.

character, and though lapsed, so far as the failure of the companies to perform required and imposed by the respective charters is concerned, are not considered subject to forfeiture.

For grants provision was made that in case the roads were not completed within specified times the lands unsold or unpatented should revert to the United States and the effect of such a reservation was considered and elaborately discussed in the Supreme Court in *Schulenberg vs. Harriman* (21 Wallace, p. 44), where it was held that the provision was no more than a provision that the grant should be void if the condition subsequent be not performed. But no such provision is incorporated in the grants of lands to the Northern Pacific, Atlantic and Pacific, and Southern (main line) Railroads. In those grants the only power or right reserved to the United States will be found in the eighth and ninth sections thereof. The first of those sections imposes certain conditions required to be performed, and the second declares that in case the companies make any breach thereof, and allow the same to continue for a period of one year, then, in such case, at any time thereafter, "the United States may and all acts and things which may be needful and necessary to insure a completion" of the roads. The time for the completion of the Atlantic and Pacific Railroad expired under its charter July 4, 1878. It had then completed 125 miles, which are situated within the Indian Territory. Nothing further, so far as this road is concerned, has been done toward completing the road. The time for the completion of the Southern Pacific Railroad expired also on said 4th July, 1878. It had then constructed 231.92 miles lying between San José and Tres Pinos, in San Benito County, and between Huron, in Tulare County, and Mojave, in Kern County, leaving a remaining section of about 90 miles to be constructed in order to make a continuous line from San José to Mojave. It has also failed to construct its road from this point to the eastern boundary of the State, an estimated distance of about

the question as to when the time for the completion of the Northern Pacific Railroad was fully considered and passed upon by the department in the decision of June 1880.

It was held that under section 8 of the act of July 2, 1864, as modified and amended by joint resolution of May 7, 1866 (14 Stats., 355), and joint resolution of July 18, 1868 (15 Stats., 555), the time for the completion of the road did not expire on July 4, 1879, and that, under section 9 of the original act, no proceedings can be taken until one year thereafter, viz, July 4, 1880. This appears to be the only construction to be placed upon the grant, and if that be so, then the time when the government can take action has not arrived; but, as stated above, the grant comes within the purview of the first inquiry of the resolution, for the time within which the road was required to have been completed has already passed.

The committee concur in so much of this decision as declares that the grants have lapsed, but do not concur in the implied conclusion that the lands could not revert to the government without a special provision therefor in the charter, and do not concur in the opinion that the time for the government to assert its rights against the Northern Pacific Company has not yet arrived. Section 8 of the charter imposed conditions upon the company and fixed the time for commencement and completion of the road. The joint resolutions passed in 1866 and 1868 were amendments to section 8 alone; they had no reference to any other section. The extended time for the completion of the road to July 4, 1879, was not then completed, and hence the land grants lapsed, as properly decided by the Secretary of the Interior, as to all lands not earned by construction. The grant was made on conditions; the conditions were broken, and the rights of the government revived. The rights of any other grantor of lands upon condition revive after the condition is broken. This is clearly stated by the Supreme Court in the case of *Schulenberg v. Harriman* (21 Wallace, 44). But it is contended that though the rights of the company to these lands have lapsed, the government must wait twelve months before it can take any action to assert its own rights. This seems to involve a palpable absurdity. If the government must wait, it is because the company has some right which it may perfect during the twelve months; but it is difficult to understand how such a right can be consistent with the decision of the Secretary that the rights of the company have lapsed. It is contended that section 9 of the charter compels the government to wait one

year after the lapse of the grant before it can proceed. We think this a total misconception of the law. The language of section 9 is as follows:

SEC. 9. *And be it further enacted*, That the United States make the several conditioned grants herein, and that the said Northern Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States, by its Congress, may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

The language of this act shows that it was an enabling and not a restraining statute as to the powers of the United States, and in truth section 9 had no reference whatever to what should be done in case the land grant should lapse, as it has done. Section 9 was intended to apply to breaches of condition that might occur before the grant should finally lapse, and to give the United States the right to step in and build the road, if it saw fit, after any failure for twelve months to comply with any of the conditions of the charter. And your committee are utterly unable to comprehend how a statute authorizing the government to take charge of and build a road for breach of condition before ultimate failure of the charter or grant, can be construed into a restraining statute to prohibit the government from exercising its legal right to declare a forfeiture when all the rights of the company have expired by limitation.

While the time for the completion of the road was unexpired the government had no right to do anything but take measures to insure the completion of the road, and it could not do this until the company had failed for more than twelve months to discharge its own duty. But when the time for completion had expired, the land grant lapsed, and thereby the land reverted to the grantor, to be retaken whenever the United States saw fit by proper proceedings to do so. But if the government's right to proceed to a forfeiture is restrained by section 9 until twelve months after a breach of condition, the language of the section shows that the breach of any condition gives the right to proceed. It was not necessary, therefore, to wait for a final lapse of the grant. One essential condition was that fifty miles of the road should be completed every year after the second year.

This condition has been long since broken, and yet by the decision of the Commissioner we have the government placed in this singular attitude.

The company has been guilty of breaches of the conditions of its charter, and these have continued for more than twelve months, and the government has therefore the right to take possession of and complete the road now. But the breaches of condition have continued many years, until the rights of the company have all lapsed, yet the government must wait twelve months after the lapse before it can assert its rights as owner of the lapsed lands. In this view of the case we are not astonished that the land Commissioner should have said "these grants are anomalous in character." There is no rule of law better settled than that statutes of limitation are never cumulative, and your committee think these land grants have lapsed, that the right of the government thereto has revived, and that there is no legal reason why an act of forfeiture may not be at once enacted.

But an appeal has been made to the generosity of Congress to extend this land grant to the North Pacific. If, as admitted by the Commissioner, the grant has lapsed, there can be no extension of it, and the only question now is, shall we make a new and original grant of these



lands to the North Pacific? If we are to look to the annual report of the president of this road made to the stockholders in New York, September 24, 1879, it not only does not need this immense land grant of about 33,000,000 acres of land, worth double as much as the estimated cost of the road to be completed, but scarcely needs the assistance of the loan tendered to it by the substitute which we report.

The report of the president shows the company to be in a most flourishing condition. By the reorganization all the debts of the old company were wiped out, and the new company, who were first-mortgage bondholders, are now the owners of 560 miles of a road well built and equipped, running through a growing and prosperous country.

The gross earnings of the road for the ten months ending June 30, 1879, were \$1,167,261.82, showing an increase of \$220,023.53 over the earnings of the same time for the year previous, and the net profits of the year are stated to be \$516,869.38. The debt is stated to be \$385,302.46, and after enumerating the facilities for payment the report says "This net floating debt is therefore easily extinguished."

The original grant of land was 43,000,000 acres, and of these 10,579,200 acres have been earned by construction, and of these 2,312,119 acres have been sold at an average price of \$3.75 per acre, making about \$8,470,415 bonus received from the government.

The president's report further shows that contracts have been made for the construction of this road averaging about \$12,000 per mile. The land grant asked for is twenty sections, or 12,800 acres per mile, and this at \$2.50 per acre would give \$32,000 per mile—more than double the contract cost of the road. The estimated cost of the road is about \$40,000,000; the land grant asked for is about 32,000,000 acres, the estimated value of which is about \$95,000,000. This proposition therefore for a renewal under the guise of an extension of this land grant simply amounts to a building of the road by the government, presenting it to the company when completed, and giving them a bonus of about \$45,000,000 for accepting the present.

Your committee are not prepared to recommend such a proposition to swell the coffers of an already opulent corporation.

The argument made that when any grant of land is made upon condition, the land reverts to the grantor, without any special stipulation therefor, upon breach of the condition, applies equally to the Southern Pacific and the Atlantic and Pacific, without any embarrassment as to the time when proceedings of forfeiture may be commenced by the United States.

The grant to the Texas and Pacific Railroad was also made upon condition that it would commence its road at San Diego, in California, within two years after the approval of its charter, and complete fifty miles of its road within that time, and so much each year thereafter as to insure the completion of its road in ten years.

Your committee find that said Texas and Pacific have not complied with these conditions, and have not built any of its road through the public lands, and have therefore earned no portion of its grant, but the grant to this road does not expire until the 3d of March, 1882, and a clause is inserted in the substitute that the forfeiture of this grant shall not be effective until after the 3d of March, 1882, without the consent of this company. But your committee have reason to believe the Texas and Pacific Company will find it to its interest to consent thereto and accept the provisions of this act.

A synopsis of the substitute:

Section 1 of the substitute declares all grants forfeited that were made

to the Northern Pacific, Southern Pacific, Atlantic and Pacific, and Texas Pacific, except where the lands have been earned by construction.

Section 2 sets apart all the lands heretofore granted to these roads, and the alternate sections contiguous thereto, as public improvement lands, to be sold at \$2.50 per acre, one-half the proceeds of which shall be covered into the Treasury as a public improvement fund. A proviso protects the rights of homestead entries.

Section 3 provides for loans from this fund to the above-named roads upon the completion of sections of ten miles, but limits the loan to four-fifths of the actual cash cost of the road. The loans to be secured by first-mortgage bonds, due in ten, twenty, and thirty years, and bearing  $3\frac{1}{2}$  per cent. interest. A proviso gives preference of loan to the road running through the lands sold.

Section 4 provides for the building of future roads through public lands in the same manner.

Section 5 makes the money arising from the sale of these lands and the interest thereon a perpetual improvement fund.

Section 6 prescribes the method of making loans.

Section 7 limits future loans to two-thirds of cash value of road.

Section 8 gives priority of loan to the roads from which the land grants are taken away.

Section 9 provides for a future change of this law.

Section 10 gives the option to the Texas Pacific to accept the benefits of the act.

Section 11 repeals all inconsistent acts.

It will be observed that the bill reported by your committee contemplates not only the completion of the four transcontinental roads named therein, but seeks to establish a general system for giving aid to all roads hereafter constructed through the lands of the United States, and provides a fund to enable the government to accomplish this purpose without taxation and without incurring any risk by the indorsement of railroad bonds.

By this bill about 106,500,000 acres of public lands are rescued from corporations and restored to public use, and if they can be sold at an average of \$2 per acre will give us \$213,000,000 for purposes of public improvement, and other sums will hereafter be added as other roads are hereafter constructed through the public lands. Your committee were careful not to interfere with the right of homestead entries, and while they have been actuated by an earnest desire to rescue the public domain from the extravagant, if not reckless, legislation of the past, they trust they have not been unmindful of equity and justice toward the corporations which have forfeited their legal claims during a great financial crisis. They believe they are sustained in the course they recommend by the general principles of law herein stated, but, if mistaken in this, they feel assured that Congress has power to alter, amend, or repeal the charters heretofore given, and that the change of policy herein recommended is in accord with the interest of the government and the demands of public opinion.

ABAGAIL S. TILTON.

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APRIL 1, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. FARR, from the Committee on Revolutionary Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 5546.]

*The Committee on Revolutionary Pensions, to whom was referred the bill (H. R. 3298) granting arrears of pension to Abigail S. Tilton, having had the same under consideration, beg leave to submit the following report:*

It is in evidence that the husband of the petitioner, Benjamin Stevens, was a soldier of the revolutionary war, and was mustered into service on the 18th day of July, 1777, serving as a private in Capt. Samuel McConnell's company, of Col. Thomas Stickney's regiment, of the brigade commanded by General Stark, and was honorably discharged on the 18th day of September, 1777.

It is also in evidence that at the date of the petitioner's marriage with the said Benjamin Stevens she was the widow of David Tilton, and was married to said Stevens on the 31st day of January, 1831, and that they lived together until his death, which occurred on the 25th day of August, 1832; that she subsequently married Adoniram Paige, who died in 1848; that by special act of the New Hampshire legislature, approved January 4, 1849, she was permitted to take the name of Abigail S. Tilton, and in which name she now petitions Congress for relief.

It is in evidence, by letter of the Commissioner of Pensions, that by the act of Congress approved February 3, 1853, she was entitled to have her name placed upon the pension-rolls at any time prior to June 22, 1874, at which date the aforesaid law was repealed.

It is also shown that it was through no fault of the petitioner that she did not avail herself of the provisions thereof before its repeal. Living in a secluded country place, and knowing but little of the proper manner of making application for pension, she caused a petition to be drawn up setting forth in full the facts in her case, which was sent to the member of Congress from her district and by him was deposited in the petition box of the House June 8, 1868, as is shown by the journal. The petitioner was soon after informed by one she had reason to rely upon that she was not entitled to a pension, and therefore slept on her rights until informed of her error long after the repeal of the act of February 3, 1853.

It is also in evidence that since the death of her third husband, Adoniram Paige, she has lived with and been supported by Nathaniel D. Tilton, the son of her first husband, until about three years since, when he died, by which event she is now left childless and destitute;

that she is now nearly ninety years of age, and in receipt of no means whatever to furnish food or clothing or medical attendance and nursing in her last years of life. In consideration of which, and in accordance with the spirit of the act approved March 11, 1878, granting pensions to widows of revolutionary soldiers, the committee submit herewith a bill granting her a pension at the rate of \$16 per month, believing that will meet her needs more fully than the provisions of the bill (H. R. 3298), which provides for payment at the rate of \$8 per month from 1854 to date of special act granting her a pension, March 3, 1879.

Your committee therefore report back the bill (H. R. 3298) with a substitute therefor, and recommend the adoption and passage thereof.

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MOSES FULLINGTON.

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APRIL 1, 1830.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. FARR, from the Committee on Revolutionary Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4446.]

*The Committee on Revolutionary Pensions, to whom was referred the bill (H. R. 4446) granting a pension to Moses Fullington, having had the same under consideration, respectfully submit the following report:*

It is in evidence that on the 2d of May, 1878, the claimant filed an application for pension in the office of the Commissioner of Pensions, declaring that he served as a private in the company commanded by Capt. David Chadwick, Colonel Dixon's regiment of the brigade commanded by Brig. Gen. Elias Fassett, Vermont Militia, war 1812. That he entered the service at Cambridge, Vt., September 15, 1813, and remained therein for a period of seventeen days, at which time he was honorably discharged, by a *verbal order*, at Cumberland Head. That he entered the service as a substitute for his father, Ephraim Fullington, who was drafted.

On the 10th day of October, 1878, the Third Auditor returned the information to the Commissioner of Pensions that "no rolls of Capt. David Chadwick's company of Vermont Militia on file in this office."

On the 19th of November, 1878, the said application of Moses Fullington was rejected by the Commissioner of Pensions, "on the ground that there is no record of the service of the company in which service is alleged."

- To establish said service, outside of the record, the claimant produces the following testimony:

(1.) Affidavits of Dexter Whiting, aged seventy-four years, and Samuel B. Waters, aged eighty-six years, residents of the same town as claimant, declare an acquaintance with the claimant of forty-six years standing, and that from common report they have always believed that he was a soldier of the war of 1812, in Capt. David Chadwick's company of Vermont Militia.

(2.) Affidavit of Nancy Brush, dated the 4th day of June, 1878, deposing that the said Nancy Brush is seventy-four years of age; that she is the daughter of Ephraim Fullington and sister of Moses Fullington, the claimant; that she distinctly recollects many of the circumstances connected with the entrance of her brother into the Army, during the war of 1812; that her father was twice drafted, the second time during the year 1813; that she was at home continuously during the said war;

that her father and Capt. David Chadwick were near neighbors, living on the same highway on adjoining farms; that Captain Chadwick offered to accept her brother Moses as a substitute for her father; that she distinctly remembers seeing the accouterments of her brother when about starting, of watching him as he passed to the roadway, through the room, where she afterwards gave way to her emotions; that her impression has always been that he continued in the service nearly three weeks, and that they heard from him several times by mail during his absence.

(3.) The affidavit of Mrs. Rosamond Carleton, dated June 1, 1878, deposes that she is seventy-nine years of age, and is the daughter of Capt. David Chadwick; that she distinctly recollects that Moses Fullington, eldest son of Ephraim Fullington, was accepted by her father as a substitute for his father, in the company commanded by her father, forming a part of the regiment commanded by Colonel Dixon, Vermont Militia; that she distinctly recollects the fact of Moses Fullington coming into her father's house on the morning of the march, which was in the fall of 1813; that her father was absent from home with his company, she believes, nearly three weeks; that she is well acquainted with Nancy Brush, formerly Nancy Fullington, a sister of Moses Fullington.

From this, and other evidence not sworn to, the committee are of the opinion that the said Moses Fullington has satisfactorily established his period of service to have been of sufficient length to entitle him to a pension under the act of March 9, 1878; they therefore return the bill to the House and recommend the passage of the same.

SAN FRANCISCO LAND ASSOCIATION.

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APRIL 5, 1880.—Recommitted to the Committee on Private Land Claims and ordered to be printed.

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Mr. BURROWS, from the Committee on Private Land Claims, submitted the following

R E P O R T :

*The Committee on Private Land Claims, to whom was referred a memorial of the San Francisco Land Association, and also a bill relative to a private land grant in California, report :*

The petitioners are citizens of the United States, shareholders in a company under the laws of Pennsylvania who, in 1853, purchased a tract of some 10,000 acres, or one-third of the estate of the Mission Dolores, alleged to have been granted on the 10th of February, 1846, by the acting Mexican governor, Pio Pico, to one Santillan, the missionary priest or administrator of that mission.

By the treaty of 1848, whereby California and other territories were acquired of Mexico, the United States promised to protect prior grants and property rights. Such would have been the duty of this government without such stipulation, as frequently decided by the Supreme Court.

To determine such rights, Congress, by an act approved March 3, 1851, provided a special court of three commissioners to hear and decide upon the validity of all land titles claimed by private citizens.

The act declares that the court shall be governed by said treaty, the laws of nations, the custom of the country, principles of equity, and the decisions of the Supreme Court of the United States so far as applicable. (Vol. 9 of Statutes, page 631.)

The grant in question was submitted to the court by James R. Bolton, who had purchased the land of Santillan.

The commissioners, upon a full hearing, decided the grant to be valid, and confirmed it by a decree.

Upon appeal, that decree was confirmed by the circuit and district judges of the United States for California. Upon appeal to the Supreme Court, however, the decree was reversed and the grant rejected; and soon after the land was disposed of by the United States to the city of San Francisco.

The petitioners claim that the decision of the Supreme Court (reported in 23 How. R., 341) was the result of new rules applied to this case, contrary to former decisions and the act of Congress, and which have since been abandoned by that court as erroneous; also, that they have now obtained important new evidence which would have changed the result if it could have been produced at the former trial. They

therefore ask a new trial, which cannot be granted by the court, the United States, without leave of Congress.

In case the courts should hold the grant invalid no relief is. If, however, the courts decide that the United States have failed to fulfill its treaty stipulation, and have appropriated the lands of the grantors, they ask remuneration therefor in money or other thing of equivalent value.

Among private suitors the law recognizes the right of the party to a rehearing for an error of law by the court, or for newly discovered evidence not before attainable that would change the result. The same moral right no doubt exists where the government is the party.

Congress has recognized this right at different times, and has provided for new trials when it seemed probable that injustice had been done to the government or a private suitor. Such legislation is decidedly constitutional and proper. (*Semply et al. v. United States*, 7 Pet.

Upon a careful examination of the cases, we find that the rule of evidence recognized by the Supreme Court in relation to Spanish and Mexican grants have not been uniform.

Prior to the time of the confirmation of the Santillan grants by the lower courts, the Supreme Court had uniformly held that the grant in due form, but also any concession or permission to the grantee was entitled to protection under similar treaty stipulations, and that a patent or certified copy by a colonial secretary, given to the grantee, was lawful evidence of the grant the same as patents issued by the government, and that such patents were *prima-facie* evidence of the grant. A provincial governor had not exceeded his powers, and that all the necessary prerequisites of the law had been complied with, and the production of any record was unnecessary.

The following are some of the cases embodying these principles:

*United States v. Perchman* (7 Pet., 83).

*United States v. Arredondo* (6 Pet., 691).

*Delassus v. United States* (9 Pet., 117).

*Strother v. Lucas* (12 Pet., 438).

*United States v. Wiggins* (14 Pet., 334).

*United States v. Rodmon* (15 Pet., 130).

*United States v. Delespine* (15 Pet., 226).

*United States v. Peralta* (19 How., 347).

These rules of evidence were also uniformly applied to United States and State patents as the common law of the country. That is, a patent itself, or a certified copy thereof, is *prima-facie* evidence of the validity of its regularity, without the production of the record.

*Polk v. Wendell* (5 Wheat., 293).

*Patterson v. Winn* (5 Pet., 232).

*Bagnell v. Broderick* (13 Pet., 448).

*United States v. Stone* (2 Wall., 535).

*Gibson v. Choteau* (13 Wall., 92).

Also that a failure of the governor or other official to perform his duty in any particular should not prejudice the grantees.

*Delassus v. United States* (9 Pet., 117).

*Tremont v. United States* (17 How., 542).

In the latter case there seemed to be several omissions of official duty among others the governor omitted to lay the grant before the court. The court say (p. 563), "The omission or inability of the authorities to perform their duty cannot, upon any sound principle of law or equity, forfeit the property of the individual to the State."



also *Hornsby v. United States*, 10 Wall., 238; *United States v. Penalta*, 19 How., 347.)

The foregoing principles and rules of evidence were by the act of 3d March, 1857, made the statutory rules of decision in California cases (*Fremont v. United States*, 17 How., 553).

It was an enactment of the maxim *stare decisis*—a declaration by Congress that rules of property should not be changeable.

It would seem, however, that the Supreme Court departed from these rules in this case of Santillan's grant, and held that the patent executed by the governor and attested by the secretary and certified to have been duly entered in the records was no evidence of a grant without producing the record, or proving its loss, and that the proper entry had been made. This is so contrary to the long and uniform line of decisions that had been made prior to the trial of this case in the district court, that it must have been a surprise to the suitors. The new rule proceeds upon the theory that the grant delivered to the grantee by the Mexican authorities is secondary evidence. It was first announced in *Cambuston's case* some months after the trial of the Bolton case in the district court (20 How. Rep., 59). *Cambuston* was allowed a new trial that he might be allowed to supply the additional evidence required by the new rule. We are unable to see why these claimants in the same situation should not enjoy the same privilege. If the evidence in their case was secondary it had been received without objection and was sufficient (*Stoddard v. Chambers*, 2 How., 284, 315).

Later decisions confess this to be the correct rule as well in cases of Mexican grants as in others (*United States v. Moreno*, 1 Wall., 402, 403; *Schuehardt v. Allen*, *id.*, 367).

Indeed, the latest decisions seem to confess that the grant or title paper delivered to the grantee, whether by Mexican or other public authorities is not inferior or secondary evidence, but is as good if not better, than any other. See the case of *Palmer v. Low* (8 Otto R., 1), where the court hesitate to receive the record instead of the patent or document that was delivered to the grantee, and only permits it because in cases of Mexican grants in California the record kept by the Mexican officials has been held to be not inferior as evidence to the patent itself.

So in *Calfield v. McClelland* (16 Wall, 335), the court say, "surveys and patents are always received in evidence as *prima facie* evidence of correctness," and that the officials have done their duty.

So in *Hughes v. United States* (4 Wall., 232), the court hold that as a patent is *prima facie* evidence, if it was improperly issued the government should proceed in equity to have it canceled.

Another ground for rejecting the grant was, that it was not approved by the departmental assembly, and that it was so extraordinary that a grant should have been made to a priest.

An examination of the record shows that the governor and departmental assembly had given their attention for a year to the subject of secularizing and disposing of all mission property, and that on the 30th of March, 1846, they definitely resolved to give the missionary priests portions of the property of each mission for their own use, not exceeding one-half, in the discretion of the governor, and that whatever had been already done in pursuance of that plan was then and there ratified. (See record, page 308.)

This record must certainly have been entirely overlooked by the court, as shown by its opinion.

One Batello, a member of that assembly, testifies positively that this

grant was approved (record, p. 21), and no one gave contrary testimony. The court in its opinion considered this disproved, however, because the record is silent on the subject, and shows that Batello was absent on leave. The record, while reciting the absence of this member, also declares his presence on the day the disposition of mission lands was considered, and his participation in the proceedings. (See record, page 305.)

As this discrepancy in the record is not noticed in the opinion of the court, we incline to think it was overlooked, as well as the unmentioned but very important testimony of De la Guerra, who identified a deed dated in April, 1846, from Santillan, of a parcel of the land in question, and which recites this grant from Pio Pico. The witness swears positively that the deed was executed at its date, and that he then attested it as subscribing witness. (See record, pages 55-253.)

In rejecting the grant, partly because it was not approved by the assembly, was applying another new rule to this case, the opposite previous decisions concerning Mexican grants.

United States *v.* Frémont (17 How., 542).

United States *v.* Reading (18 How., 1).

United States *v.* Cervantes (18 How., 553).

United States *v.* Larkin (18 How., 557).

Recent decisions admit this error and there is now a return to the old rule. (See United States *v.* Johnson, 1 Wall., 326; Hornsby *v.* United States, 10 Wall., 238.)

The court seems to have been influenced in its opinion rejecting this grant by a strong suspicion of fraud, of which we can find very little evidence, and that of a doubtful, uncertain character.

It consisted of certain oral declarations by Santillan, that he claimed the land only for the church or not at all. This was thought to be incompetent evidence by the lower court (citing 4 Mass. R., 702; 7 Sarg., 458; 7 Johnson R., 187), also to be improbable in fact.

This, however, with the circumstances that Santillan, with his counsel, Dr. Poli, went to Santa Barbara and returned with the patent in 1849, and that no explanatory testimony was given by either Santillan, Dr. Poli, or Pio Pico in relation to the grant, left it open in the opinion of the Supreme Court to a grave suspicion of fraud, and that was a ground for its rejection. The court say:

The testimony does not disclose what was the depository of this grant in Santa Barbara, nor when nor under what circumstances it was placed there, nor under what circumstances withdrawn. Neither Santillon nor Dr. Poli have been examined as witnesses, nor was Pio Pico interrogated in reference to the authenticity of the grant. There is no proof to show that any of the conditions of the grant have been fulfilled. The testimony as to the payment of any portion of the mission debt is vague and unsatisfactory. There was no judicial possession sought or obtained and no claim made for the land as grantee thereof to give the community at large any information concerning it. Our opinion consequently is that the validity of the grant has not been sustained.

The real facts, as now shown, were, that Dr. Poli had died; that Santillon, after selling the land, had gone to Mexico, and the petitioners were unable to ascertain his residence or procure his testimony. They did produce Governor Pico as a witness before the court, but the government objected to his competency as a witness because he had one-fourth negro blood, and was, by a recent statute of California, disqualified from giving his testimony. The government also refused to call this witness in its own behalf when produced.

That statute is now repealed, and both Pico and Santillon (then disqualified also under the same statute by reason of being half Indian) are now competent witnesses to prove the authenticity of the grant.

les, a very important record, that of a court at Santa Barbara, as lost during the war, has been recovered since the rejection of grant, and shows that it was left with that court for safe-keeping, 1846, at which time Santillon acknowledged a deed (the one attested by witness Dela Guerra), conveying a portion of this land to

There was no provision for the registry of deeds in Mexico (*Sill v. Sutter*, 17 Cal., 294). Conveyancing was done in the presence of a court, and of which an entry was made; and sometimes patents or deeds were deposited there for safe-keeping, of which an entry was also made. The authenticity of this record is verified, and we cannot resist the conclusion that if it could have been included in the evidence the decision would have been favorable to the grant. It was upon evidence of less weight that the Sutter grant was confirmed by the Supreme Court in the absence of both the original record and patent. (*United States v. Sutter*, 21 How., 170.)

For legal possession, it was a formality to determine boundary by the approval of the assembly. Its omission did not defeat a grant. At the date of the grant Santillon was in possession of the premises, as well as prior thereto, and continuously thereafter until 1849. (*How.*, 559; 18 How., 557; 10 Wall., 234.)

Another objection urged by the court was that it did not appear that Santillon had paid the debts of the mission, as required by his grant. The evidence shows that some debts were paid by Santillon, but whether all were paid is not known. That, however, was plainly a condition of the grant, and a failure would not avoid a grant or give the land to the United States. Such was the rule in prior cases. (*United States v. Sutter*, 18 How., 557; *United States v. Frémont*, 17 How., 542.) Such was the rule admitted to be the proper rule of law in cases of Mexican grants. (*United States v. Sutter*, 10 Wall., 240.)

It is a general rule. (*Ruch v. Rock Island*, 7 Otto, 693.) And it may be said that in all the later cases the Supreme Court returned to its earlier doctrines, and recognized their binding force over those laid down in the Bolton case. It now decides, more definitely, that if there be a suspicion of fraud it must be proven by some evidence or not allowed, and that insufficiency of proof and objectionable evidence cannot be first urged on appeal. (See *United States v. Sutter*, 1 Wall., 326; *United States v. Arguello*, 1 Wall., 352; *United States v. Moreno*, 1 Wall., 400; *United States v. Yorba*, 1 Wall., 412; *United States v. Sutter*, 10 Wall., 225.)

The rules aforesaid as laid down in the earlier cases and referred to in the act of March 3, 1851, and recognized in recent cases as the rules of law, been applied in the Bolton case, it is not probable that the grant would have been rejected.

The case seems to us to have been even better proven than many of the earlier and later cases where grants were confirmed. As is well known, many of the Mexican records, including the governor's book of records, were lost or destroyed during the Mexican war, and some by the negligence of United States officials. This is conceded in the opinion of the court and abundantly proven in the record.

The court in its opinion insists, however, that claimants should have produced an expediente, or documents relating to this grant from the archives.

The archive clerk was called, who testified that none were to be found, and the fact was in the opinion of the court fatal to the case. To require such evidence in every case seems unreasonable, for, as is well

known, some expedientes were lost during the war, as testified to by General Castro (p. 146), and many were lost or destroyed in other ways.

General H. W. Halleck, the first State secretary, shows in this case that the public archives were only partially preserved after delivery to the United States officials, and that they came from various sources, both public and private (p. 92). Some were left in a public hospital and used from for weeks as waste paper, until they were casually observed to relate to land titles, when the remnant was saved. Even at a later date those archives were so carelessly kept by United States officials that they could be added to or subtracted from by interested parties, as shown to the court in a later case. (*United States v. Knight*, 1 Black, 248.) In such case should not even secondary evidence, the best the nature of the case allows, be admitted? as decided in the cases of *Riggs v. Taylor* (9 Wheat, 486); *United States v. Sutter* (21 How., 175.)

Santillon delivered to his vendee his patent or definitive title granting him the land absolutely in the name of the Mexican nation. It was in the usual form, executed by the governor and attested by the secretary of State, and certified to have been duly entered of record. (Record, p. 341.)

That secretary and the man who was his clerk when the patent bears date swear positively that it was executed and recorded at its date (pp. 10, 121, 122, 123).

The succeeding secretary swears that he saw Santillon's name three months later in the book of records, which indicates a grant (p. 406, Several other witnesses saw the grant soon after its date in Santillon's hands, and one of them loaned \$1,600 with which to pay the mission debt assumed with the grant (pp. 11, 26, 65).

There seems to be nothing to cast doubt upon the truth of this evidence save the absence of the record and the testimony of some witnesses who understood Santillon to make oral declarations inconsistent with his ownership of the land; and as these witnesses mostly could speak only English, and Santillon only Spanish, there was a possibility if not probability of mistake.

Our conclusion is, that as the rules applied to this grant for its rejection are at seeming variance with the earlier and later decisions, and as important evidence newly discovered or newly admissible by the repeal of the California statute is now attainable that may dispel any doubt and prove the grant to be entitled to protection, the case should be referred back for re-examination and the court be allowed, after hearing all proper evidence, to do justice and correct any error either of law or fact that may be found.

As declared by the court in the late case of the *United States v. Moreno* (1 Wall., 404):

The law recognizes alike legal and equitable rights and should be administered in a large and liberal spirit. A right of any validity before the cession was equally valid afterwards; and while it is a duty to guard carefully against claims originating in fraud, it is equally a duty to see that no rightful claim is rejected. No nation can have any higher interest than the right administration of justice.

Views equally broad and liberal respecting the duty of the government and the rights of private claimants in this class of cases pervade many of the later decisions, and are more in harmony with those expressed in the cases prior to the act of 1851 than those in the *Bolton* case (see 1 Wall, 329, 358).

The land in question has been disposed of by Congress to the city of San Francisco, purchased by numerous people, improved and sold possibly many times over.

Any wrong that may have been done to the petitioners, should not be remedied by a greater wrong done to others. Present titles should

not be disturbed, nor a cloud cast upon the title of a large and growing city. It ought rather to be confirmed.

If the supreme court, upon examining the case after receiving the new evidence, shall decide the grant not to have been valid, no relief is to be given. If, however, the concession was really made by the Mexican governor in February, 1846, no one will deny that it is the duty of the government to indemnify the owners by some equivalent.

If the government in honor and law owe an indemnity, we recommend it to be made out of the unappropriated public domain in value equal to the grant.

We need scarcely add that we have given the case the careful attention demanded by its importance, and having concluded that a new trial is, under all the circumstances due to justice and national honor, we recommend that it be granted.

We herewith submit as an appendix, certain affidavits concerning the newly found record, with a translation of the entries therein pertinent to this subject.

#### APPENDIX.

##### *Affidavits concerning new evidence.*

The book referred to in the affidavits is one of general record of proceedings, civil and criminal (in the Spanish language), held before the alcalde of Santa Barbara, from the year 1840 to 1848, inclusive, and contains a record of the Carrillo deed, made on the 6th day of April, 1846, in the following words, properly translated:

"This day appeared before me the Señor Curate Don Prudencio Santillan and the citizen Joaquin Carrillo, their object being that this tribunal (jugado) under my charge should make note in this book of records of a title that the said Señor Curate Santillan granted to the said Señor Carrillo, for four hundred varas of land in the mission of Dolores, this 6th day of April, 1846, which shall stand as evidence for the ends and purposes of those interested therein."

Also there is an entry of which the following is a translation:

"Having appeared in this tribunal the señor curate rector and minister of the mission of Dolores, Don J. Prudencio Santillan, he made known that he desired to place on deposit some important documents that he had with him, so that he might not lose them on his journey from this place to the Mission of Dolores. Said documents consisted of a title given by the señor Governor Don Pio Pico for three leagues of land in the Mission of Dolores; another, of the approval of the said title by the most excellent departmental assembly; some others, inventories of personal property of the said Mission of Dolores. Said documents remain deposited, making a bundle, marked 'Papers belonging to the Señor Curate Don Prudencio Santillan.'"

STATE OF CALIFORNIA,

County of Santa Barbara:

CHARLES E. HUSE, being duly sworn, says:

That he is a resident of said county; that he has resided in the town of Santa Barbara, county of Santa Barbara, State of California, for nineteen years last past; that during the said nineteen years he has filled various offices; that he was a member of the assembly of the State of California, from the county of Santa Barbara, in the year 1853; that he was once county clerk, recorder, and auditor of the said county; that during six years he was district attorney of said county, and is now the town attorney of the town of Santa Barbara; that he is forty-six years old, and is by profession an attorney at law; that he is familiar with the Spanish language, and has devoted much time during the past nineteen years to the examination of Spanish records and documents relating to the history of California under the government of Mexico, and to land titles made by the Mexican governors of California; that he was personally acquainted with Joaquin Carrillo in his lifetime, and is now the executor of his will and testament; that said Carrillo was district judge of the 2d judicial district of the State of California during the period of about eleven years; that this deponent was and is familiar with the handwriting of Joaquin Carrillo, and has seen him often write; that he recognizes the genuine handwriting of said Joaquin Carrillo in a bound book, with

marbled pasteboard covers, on which is written on the outside "Borrador," "Cuaderno," "Acuerdo," and in which is written, on the inside of the cover, the words "Libro de acuerdos," through which words four strokes of a pen have been made, and in which is written, on the first page of the first blank leaf, the words "Año de 1839," followed by a rubrica or scroll and the signature of "Vincente Moraga," with his rubric—the name and rubrica being twice made on said page—and in which, on the first page of the second blank leaf, is written "1839," followed by the words "En 13 de Mayo entro a Servir de Alguacil Manuel Lorenzana con sueldo de 8. p. mensales," and of which the other side of the same fly-leaf is entirely blank, followed by the stumps of 12 or 15 leaves which have been cut out, and succeeded by a page on the top of which is written "Mayo," and an entry of twelve lines, signed by "A. Rodriguez."

The said book is one of the books belonging to the prefecture of Santa Barbara, and is a genuine book of original entries; that he recognizes the handwriting of said Joaquin Carrillo on the 23d page (the number of the page being marked in pencil at the top right-hand corner), beginning with the words, "El individuo ylarion Garcia ha llegado," &c., and knows it to be his genuine handwriting; that all of said page (23) and all of the following page is in the genuine handwriting of the said Joaquin Carrillo; that the first 13 lines of page 25 (the page written in pencil) are in the same handwriting of Joaquin Carrillo; then an entry on page 66 of this book, beginning with the word "decerto" (in the margin), followed by the words "Habludo sido dictado," etc., containing ten lines, and signed Carrillo, with a rubric, is in the handwriting of Joaquin Carrillo; also, all of pages 70, 71, 72 and 73 of the said book are in the handwriting of Joaquin Carrillo; also last half of page 75, the last two lines of page 76, one entry on page 79, the last half of page 81, all of page 82, and some other writing in subsequent portions, are in the genuine handwriting of said Joaquin Carrillo; that he was personally acquainted with Raymundo Carrillo, now deceased; that he has seen him write, and is very familiar with his handwriting; that the said Raymundo Carrillo was a notary public, and, under the former government of California, wrote much as an escribando publico; that he recognizes the genuine handwriting of said Raymundo Carrillo in the said book; that all the entries in the said book, from the eleventh line from the foot of page 28 (commencing with the words "Sr. Presto, que dan publicados," etc.) to the words Sta. Barba., Octu. 22, de 1841," on the fifty-seventh page, inclusive, are the genuine handwriting of said Raymond Carrillo. The handwriting of Raymundo Carrillo occurs again in this book on page 87, eighteen lines from the top of the page, and continues on to page 134, eleven lines from the top, inclusive; then, in the twelfth line of page 104, commencing with the words "Hoy se presentaron ante mi," &c., and continuing on to the foot of the following page, the entries are in the handwriting (according to the best of my judgment as an expert) of Antonio Maria de la Guerra. His brother, Joaquin de la Guerra, used to write a hand similar to the handwriting of Antonio Maria de la Guerra at an early period. Joaquin de la Guerra is dead. He died about two years ago. Antonio Maria de la Guerra's style of writing has changed very much during the last twenty years—so much that his present writing hardly resembles his former writing in any particular. For some years his nerves have been shattered by disease, so that he cannot manage a pen well, and his eyesight is very feeble and indistinct.

This affidavit is made at the request of Mr. Fisher, who has possession of the said book.

CHAS. E. HUSE.

Sworn and subscribed before me this 1st day of December, A. D. 1871.

[L. S.]

F. A. THOMPSON,

County Clerk.

*Affidavit of Rufus C. Hopkins, of San Francisco, California.*

CITY OF WASHINGTON, District of Columbia:

Rufus C. Hopkins, being duly sworn, deposes and says that he is a resident of the city of San Francisco, and has been for the last twenty-one years; that he has been keeper of the Spanish archives in the office of the United States surveyor-general since the year 1855, and is familiar with the Spanish language; that on the 6th day of December, 1871, at the request of Mr. J. C. Fisher, of Philadelphia, at the said city of San Francisco, he examined a bound book, with marbled pasteboard covers, on which is written on the outside "Borrador," "Cuaderno," "Acuerdo"; that in the opinion of this affiant the same is a genuine book of entries in the Spanish language, belonging to the prefecture of Santa Barbara; that he is familiar with most of the handwriting found in said book; that being requested to state in whose handwriting are the entries on the latter part of page 104, and the whole of page 105, he says that, in his opinion,

the handwriting of the said entries is that of Antonio Maria de la Guerra, a citizen of Santa Barbara; other writing of his being on file in the archives of the surveyor-general's office at San Francisco.

R. C. HOPKINS.

Sworn and subscribed before me this 15th day of April, A. D. 1872.

[L. S.]

J. M. KENNEDY,  
Notary Public.

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*Certificate of Judge Hoffman.*

I, Ogden Hoffman, judge of the United States district court for the State of California, do hereby certify that Rufus C. Hopkins, the keeper of the Spanish archives in the office of the United States surveyor-general for California, has been examined before me as a witness in numerous land cases, involving the genuineness of grants of land made by the Mexican Government and its officers prior to the acquisition of California by the Government of the United States, and also involving the spuriousness of alleged grants. From opportunities afforded by the examination and cross-examination of said Hopkins, I am satisfied that he is an expert in the said matters, and that his judgment thereon is as good, if not superior, to that of any person in this State. I consider him reliable and credible.

OGDEN HOFFMAN.

SAN FRANCISCO, January 18, 1872.

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*Affidavit of Pablo de la Guerra, of Santa Barbara, California.*

STATE OF CALIFORNIA, County of Santa Barbara :

Pablo de la Guerra, being duly sworn, says that he is at present district judge of the first judicial district of the State of California, composed of the counties of Santa Barbara and San Luis Obispo; that he has held various offices under the existing and under the former government of California; that he was a member of the convention which framed the constitution of the State of California; was a senator from Santa Barbara; was lieutenant-governor of the State of California; was United States marshal of the southern district of California; has been member of the town council of Santa Barbara. I recognize a bound book, with marbled pasteboard cover, on which is written on the outside the words "Borrador," "Cuaderno," "Acuerdo." It is a book which contains entries by officers under the Mexican laws in the district of Santa Barbara. I know the handwriting of Joaquin Carrillo, Raymundo Carrillo, Antonio Rodriguez, Vicente Moraja, and Pedro Carrillo, contained in said book, and know it to be their genuine handwriting.

PABLO DE LA GUERRA.

Sworn and subscribed before me on this 1st day of December, A. D. 1871.

[SEAL]

F. A. THOMPSON,  
County Clerk.

Per C. A. THOMPSON, D. C.

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STATE OF CALIFORNIA, County of Santa Barbara :

I, F. J. Maguire, county judge in and for the said county, do hereby certify that F. A. Thompson is county clerk of the said county, and that Charles A. Thompson is his deputy, and the foregoing signature of the county clerk by his said deputy is genuine, and that the seal impressed in this paper is the genuine seal of the county court of the said county, and that the said clerk is and was, at the date of affixing the same, the legal custodian of said seal, and that the attestation of the foregoing oath is in due form, and entitled to full faith and credit.

Witness my hand, at Santa Barbara, on this first day of December, A. D. 1871.

F. J. MAGUIRE,  
County Judge in and for the County of Santa Barbara.

*Affidavit of Judge Rodriguez, of Santa Barbara, California.*

[Translation.]

STATE OF CALIFORNIA, *County of Santa Barbara* :

Antonio Rodriguez, being duly sworn, says: My name is Antonio Rodriguez; I reside in the county of Santa Barbara, State of California; I am 63 years of age; I have seen this book before, which is now presented to me, and which has written on the back the words ("Borrador") "blotter," ("Cuaderno") "memorandum-book," ("Acuerdo") "decision." I acknowledge in this book my own handwriting, which I know to be written by me, folio 18, beginning with the words "al P. Prefecto" (to the P. Prefecto), in the margin, and "the law, 27th of May, 1837," &c., continuing until folio 22, ending with the words "God, &c., October 29th, 1839." At that date I filled the office of justice of peace and court of common pleas. This is the book I kept in my tribunal.

I recognize in this book the handwriting of Joaquin Carrillo, of Raymundo Carrillo, and of Vicente Moraja; I have seen them write very often, and I am well acquainted with their handwriting. In the year 1846 the business of the tribunal here was interrupted on account of the war between the United States and Mexico, and everything was in a state of disorder and confusion. In the year 1848 the disturbances were pacified here.

ANTONIO RODRIGUEZ.

Sworn and subscribed to before me the 1st of December, 1871.

[L. S.]

F. A. THOMPSON,

*County Clerk.*

Per C. A. THOMPSON,

*Deputy Clerk.*STATE OF CALIFORNIA, *County of Santa Barbara* :

I, F. J. Maguire, county judge of the said county, hereby certify that F. A. Thompson, whose genuine signature, by his deputy, C. A. Thompson, is affixed to the foregoing certificate, is, and was at the time of certifying the same, the county clerk of the said county, duly authorized by law to take and certify oaths; that the foregoing is an impression from the genuine seal of the said court; that said clerk is the legal custodian thereof, and that his said certificate is in due form.

In testimony whereof I have hereunto set my hand on this 1st day of December, A. D. 1871.

F. J. MAGUIRE,

*County Judge in and for the County of Santa Barbara.**Affidavit of Maria de la Guerra, of Santa Barbara, California.*STATE OF CALIFORNIA, *County of Santa Barbara* :

Antonio Maria de la Guerra, being duly sworn, declares and says: I am 46 years of age; was born in Santa Barbara; I have held different offices, as mayor of Santa Barbara, senator in the legislature of the State of California, supervisor of the county of Santa Barbara, captain of a company of volunteers in the recent civil war. I was acquainted with Joaquin Carrillo, Antonio Rodriguez, Raymundo Carrillo, and Vicente Moraga. I have seen them write, and I know their handwriting very well. I have seen to-day an old book, which is marked on the back "Borrador" (blotter), "Cuaderno" (memorandum-book), "Acuerdo" (decision); I have seen this book before; it is an original book, which was usually kept in the Mexican tribunal, in charge of the judge of the court of common pleas, in the district of Santa Barbara.

I have seen this book very often in that court in former times, before there was a change in the dominion of California. I recognize in this book the original and authentic handwriting of the persons aforementioned. I have directed my attention to that leaf of the book wherein the following words are to be seen: "To-day appeared before me," &c., on the folio 104 of the book. The ink is now very indistinct and difficult to be read, especially as I have a serious defect in my eyes which obscures my sight. I cannot tell in whose handwriting those lines are written, and the handwriting of the following leaf. Sometimes a notary of the judge of the court of common pleas entered records in this book. The handwriting on folio 104 is similar to my handwriting, but I cannot say positively that I wrote it. It resembles my handwriting very much. In the year 1847 there was much disorder here, owing to the war of conquest, and the business of the tribunals was interrupted, so that no entries were made in that book.



In the year 1846 Raymundo Carrillo was the judge of the court of common pleas—it seems to me so—I am not certain.

ANTO. MA. DE LA GUERRA.

Sworn and subscribed to before me on the 1st of December, 1871.

F. A. THOMPSON,  
County Clerk.

STATE OF CALIFORNIA,  
County of Santa Barbara:

I, F. J. Maguire, county judge in and for the said county, hereby certify that F. A. Thompson, whose genuine signature is affixed to the foregoing certificate, is, and was at the time of signing the same, the county clerk of the said county, duly authorized by law to take and certify oaths; that the seal impressed in this paper is the genuine seal of the said court, and that the said clerk is its legal custodian, and that his said certificate is in due form.

In testimony whereof I have hereunto set my hand on this first day of December, A. D. 1871.

F. J. MAGUIRE,  
County Judge in and for the County of Santa Barbara.

*Affidavit of J. Coleman Fisher, esq., secretary of the San Francisco Land Association of Philadelphia.*

STATE OF PENNSYLVANIA,  
City of Philadelphia:

J. Coleman Fisher, being duly sworn, says: I have been secretary of the San Francisco Land Association since 1862. After the adverse decision of the Supreme Court in the case of the United States vs. Bolton, the association having learned from Mr. Edward C. Marshall, of Kentucky, that a book of records existed at Santa Barbara containing an entry, which he had seen, of the deed of conveyance from Santillan to Carrillo, it was resolved to dispatch a mission to California to search for the book. I undertook this mission.

It was seen that if we could discover that book of records, and if it contained the entry referred to, the justice of our cause would be made manifest. It would be tedious and unnecessary to describe the vicissitudes and delays of my progress. My first visit, during which I went to Santa Barbara and Los Angeles, was unsuccessful, and I returned to Philadelphia; but I left behind me, at both places and at San Francisco, instructions in the hands of agents to continue the search.

Information was afterward transmitted to me that the book had been found, and I lost no time in returning to San Francisco. The history of its place of deposit and how it got there, as I learned it, is truly stated in the annexed brief. The book was placed in my hands for examination. I found the entry sought for in the book; and in addition, I saw the entry of the deposit of the title-papers of Santillan at the prefecture of Santa Barbara, which explained his visit to that place in 1849, to obtain them from their place of deposit.

Mr. Marshall had stated to us that the entry he had seen in the book of records was in the middle of a page, on the left side, about two-thirds or more through the book, with entries before and after it; and, on examination, I found the entry just as described.

My experience among the archives of Santa Barbara enabled me to decide also that the book corresponded exactly in appearance, as to paper and binding, with the other books contained in that office, and not corresponding at all with those of Los Angeles, which are loosely stitched together in paper covers.

I was satisfied that this book was genuine; and this judgment was confirmed by our California counsel, who pronounced it authentic. My next effort was to obtain possession of the book, which was held by one James Paul, then, and I believe now, a dairy farmer, in the neighborhood of San Francisco. In pursuance of this I had many interviews with Paul, which it is unnecessary to detail. His object was to obtain a reward for the book, and compensation for having safely kept it; but his demand was too excessive to be entertained, and thus I was obliged to leave California a second time without this important document.

From that time, up to 1869, we were unremitting in our efforts to secure the book. From time to time various agencies were used for that purpose, and all without suc-

cess; until at length the long-sought document was secured to us through the agency of William Hayes, esq., our counsel in San Francisco, whom I had specially employed in the matter, and by whom it was at once forwarded, by express, to Philadelphia.

We received the book in 1869; and immediately on its receipt I went down to Washington, taking it with me for the examination of Mr. R. J. Walker, who had been of counsel in the cause before the Supreme Court.

After a close scrutiny, Mr. Walker announced to us that he was satisfied of its genuineness; and accordingly we entered into an agreement with him to take the management of the claim and prosecute it to completion.

Before, however, any steps could be taken in fulfillment of this arrangement, Mr. Walker died, and the large sum we had paid him as a retainer was lost to us. Immediately on the death of Mr. Walker we endeavored to secure the services of counsel to proceed to California for the purpose of submitting the book to official persons at Santa Barbara and elsewhere, and obtaining their evidence in respect to its character and authenticity. Much time was spent in this effort, but we failed in finding a suitable person who was able to leave his business here for so long a journey.

Finally, I undertook this mission myself, and on the 13th of November last (1871), left for San Francisco, taking with me the original book of records and a photographic copy of the same, which latter, in case of possible accident to the original, we had caused to be made at an expense of some \$1,200.

Arriving at San Francisco, and proceeding thence by sea to Santa Barbara, I reached there in due time, and at once entered upon the duties of my mission.

The results will fully appear from the documents accompanying this deposition, and which will be found in the appendix. They consist of depositions from high officers of the government in California, fully establishing the genuineness of the book of records.

On my return from Santa Barbara to San Francisco, I submitted the book to Mr. Rufus Hopkins, the keeper of the Spanish archives in the office of the surveyor-general. We examined it together, and Mr. Hopkins produced from the files an expediente of a Mexican land-grant, containing a document in the handwriting and bearing the signature of Antonio Maria de la Guerra. We compared this document with the entries in the book relating to the Carrillo deed, and found the two writings to be identical, both as to general tone and character, and in the formation of each particular letter.

I fully concur with Mr. Hopkins in the opinion that the book is a genuine record from the archives of Santa Barbara.

J. COLEMAN FISHER.

Sworn and subscribed before me 3d day of July, A. D. 1872.

W. W. DOUGHERTY,  
*Alderman.*

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*Affidavit of R. C. Hopkins.*

R. C. Hopkins, being duly sworn, deposes and says: That for twenty-two years he has had charge of the Spanish archives in the office of the U. S. surveyor-general for California; that these archives consist of the official records and correspondence belonging to the former Spanish and Mexican Governments of California, among which are many records in relation to grants of land by the government; that he is familiar with the Spanish language, and well acquainted with said archives.

This deponent further says that an examination of these archives shows that there are many official documents found in the same, of unquestionable genuineness, that are in the handwriting of persons not officially employed in, or connected with, the offices from which they were issued, and that, therefore, the fact that an official document or record is not found in the handwriting of the officer or clerk whose duty it was to have said record made or document written, gives no ground for doubting the genuine character of such document or record.

R. C. HOPKINS.

Subscribed and sworn before me by R. C. Hopkins this 24th day of August, A. D. 1877.

I. A. ROBINSON, [SEAL]  
U. S. Commissioner, San Francisco, Cal.

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*Affidavit of George W. Wright.*

DISTRICT OF COLUMBIA, City of Washington, ss:

George W. Wright, being duly sworn, says: That he was formerly a resident of San

Francisco, State of California, and was one of the first members of Congress elected from that State, also a member of the banking firm of "Palmer, Cook & Co.," of that city. That deponent purchased the lands covered by the Santillan grant, so called, from James R. Bolton, to wit, on the 1st day of July, 1853, after the same had been presented by said Bolton before the board of land commissioners to ascertain and settle private land claims in said State, and afterward sold the same to the San Francisco Land Association in Philadelphia. That after said purchase by deponent, he had charge of said case before said board and afterwards in dist. court for the owners under said grant. That before such purchase he had upon careful investigation concluded the grant was perfectly good and valid, and purchased the same and sold it upon that faith and belief. That said Santillan, after his sale to Bolton and before the cause was presented to said board, left the State of California and went to reside in Mexico, as deponent was informed and believed, and deponent made diligent inquiries of all persons likely to know anything about Santillan's residence, and caused letters to be written to many points in Mexico where deponent learned he was the most likely to obtain information, but was wholly unable, after great efforts and search, to ascertain his whereabouts, and could not even learn that he was living, except that A. A. Green, who was assisting the United States agent to defeat the grant, told deponent he knew where Santillan was, but he refused to tell, and deponent was wholly unable to procure his testimony, although very anxious to do so. That since this claim was rejected it has been ascertained where Santillan is, and claimants have been at the expense to send to him a messenger, Rev. Dr. Happersett (a Presbyterian clergyman), who has since died, so his affidavit cannot now be given, but said Santillan informed him that he was ready to give his testimony if required so to do by a court, and will testify truly that said grant to him was truly and honestly made at its date, and the document deposited by him with the tribunal at Santa Barbara for safe-keeping till he, with Dr. Poli, went for it, as shown in the record of the case; and deponent verily believes that all the facts necessary to prove the validity of said grant can now be shown by Santillan, if opportunity be given, but was not able to produce him as a witness while said cause was pending.

Deponent further says that deponent was aware of the fact that there was a record entry of the deposit of said grant with said tribunal at Santa Barbara as well as of the conveyance to one Carrillo, referring to said grant made in February, 1846, executed before said court; and deponent caused the most diligent search to be made for said book of record, but it could nowhere be found. It had wholly disappeared, like many other important documents and records, and deponent supposed it was wholly lost. After said suit was decided by the Supreme Court, claimants have learned it was secreted, and, as deponent believes, at suggestion or on procurement of those interested to defeat his claim. Deponent now learns it has been found and procured by payment of a large sum of money.

Deponent further says that Dr. Poli, formerly agent for said Santillan and who went with him to withdraw the grant in 1848 or 9 from its place of deposit at Santa Barbara, died before the proper time to produce him as a witness in said cause.

Deponent further says that deponent caused the testimony of ex-Governor Pico to be taken in said cause upon certain points, but as the genuineness of the grant was not then disputed and as the deposition was taken 400 miles from where the court sat and the grant was filed, it was not shown witness, nor his signature testified to, nor questions put to him concerning the same by either party. But afterwards, and while the suit was yet pending, said Pico came to San Francisco, and deponent at once notified the government attorneys that he would, on a day named, proceed to take the deposition of said Pico generally in said cause, whereupon they informed deponent what he had learned of others, that said Pico was a fourth-breed and had one-fourth negro blood in his veins, so that by the statute of California and rules of court he was not competent to testify. Upon inquiry this information was corroborated.

At that time the statute and rule disqualified any person having certain negro or Indian blood from testifying as a witness in any case where the suitor was white, if objected to. And as the government would not waive the objection, said Pico was not called, but deponent notified the United States agent that said Pico was to remain in that city two weeks and the United States might examine him as a witness and the claimants would not object, but consent thereto. This was refused also.

That said Santillan was also, as deponent was informed and believes, a half-breed, being partly of Indian extraction, and could no doubt have been objected to by the government even if found and produced. The foregoing are the reasons why deponent was unable to produce the testimony of either said Pico, Santillan, or Dr. Poli, as he desired, and for that and the inability to produce said record the claim was overruled by the Supreme Court, as may be gathered by their published opinion.

The statute excluding a witness for having negro blood was not repealed, as deponent is informed and believes, until March, 1863, and for being of Indian blood, not until a later date. Said Pico, in another case where the objection was not made, testified the Santillan grant was made at its date, was genuine, and made as required by Mexican laws,

and both he and Santillan are now ready and qualified by law to testify, and will, if duly subpoenaed, show that said grant was duly and properly made at the time of its date.

Deponent further states that a large number of the people of California, when it was acquired by the United States, were of mixed blood, Indian or negro, many of whom, like Pico and Santillan, were of great personal worth and integrity and capable of attaining the highest official positions in the territory or even in the central Mexican Government, as did the late President Juarez. Yet by the statutes of California (as enacted by the Americans) they could not testify in court against the objection of either party—the suitors being white. Deponent further says that he has no interest direct, remote, contingent, or otherwise in said claim or its success; and further says not.

G. W. WRIGHT.

Subscribed and sworn to before me, this 17th day of December, A. D. 1878.

[SEAL.]

W. R. IRWIN,  
*Notary Public.*



SAN FRANCISCO LAND ASSOCIATION OF PHILADELPHIA.

880.—Committed to the Committee of the Whole House and ordered to be printed.

PHILADELPHIA, from the Committee on Private Land Claims, submitted the following as the

VIEW OF THE MINORITY:

[To accompany bill H. R. 2553.]

undersigned members of the Committee on Private Land Claims, acting from the report of the majority of the committee, present the following views upon the bill (H. R. 2553) for the relief of the trustees of the San Francisco Land Association of Philadelphia. A bill similar to the one above referred to was presented to this House in the third Congress, and referred to the Committee on the Judiciary. The report of that committee, made on the 3d of March, 1875, is, we think, an accurate statement of the facts and law of this case. That is as follows:

The petitioners are citizens of Philadelphia, and are the stockholders of the unincorporated joint-stock company known as the San Francisco Land Association, organized under the general laws of Pennsylvania for the purpose of investing capital and purchasing the real estate known as the Dolores Mission, in the county of San Francisco, State of California.

Memorial and evidence are presented, and the association is represented by its officers, Frederick Fraley, president, Lewis Cooper, treasurer, and J. Coleman Fisher,

and they show that on the 10th day of February, 1846, the lands belonging to the mission of Dolores, situate within the limits or adjacent to the present city of San Francisco, were duly granted by Governor Pio Pico, in accordance with the laws of the State of California, to José Prudencia, Santillan, a secular priest of the Mission Dolores and citizen of the State of California, for sufficient considerations, who afterwards, on the 11th of July, 1850, for the consideration of \$200,000, conveyed 10,186 acres of said lands to John A. Bolton, of San Francisco, which deed of conveyance was recorded June 3, 1850, in liber A, pages 170 and 171, of the records of deeds of San Francisco.

On the 13th of July, 1853, said Bolton, for the consideration of \$200,000, conveyed the same to George W. Wright, of San Francisco, which deed of conveyance was recorded July 15, 1853, in liber 25, page 24, of the records of the deeds of San Francisco.

On the 15th of August, 1853, said Wright conveyed the same, for the consideration of \$1,300,000, to Francis N. Buck, Simon Wilmer Cannell, and Caleb Jones, of Philadelphia, trustees, for the use of the San Francisco Land Association, which deed of conveyance was recorded January 3, 1855, in liber 2 of deeds of trust of San Francisco, and by which the equitable title to said lands became vested in the association.

At the date of the original grant to Santillan the present city of San Francisco was the Mexican village of Yerba Buena, of not more than one hundred inhabitants, and the property conveyed in the grant was of only nominal value; but the growth and buildings of the city of San Francisco rendered the property, as early as 1850, of rapidly increasing value and importance. Emigration had made it valuable, and in 1850 the lands were occupied by hundreds of squatters, claiming title by purchase from a justice of the peace acting in the capacity of alcalde of San Francisco.

In 1850, the pretended grantee, Santillan, had taken means of giving public notice of the grant.

information of the nature of his title, and by publication on the 6th of March, 1850, in the Pacific News, of San Francisco, warned persons against taking possession of and of purchasing said property.

The treaty of peace known as Guadalupe Hidalgo, between the United States and Mexico, had provided that the existing private land grants and titles to lands in the Territory of Mexico, ceded to the United States, should be respected and protected by the United States. In conformity with this treaty, the act of March 3, 1851, entitled "An act to ascertain and settle the private land claims of California," was passed, establishing a board of commissioners for the adjudication of this class of claims.

In March, 1852, the claimant, James R. Bolton, presented this claim to the board of commissioners, sitting at San Francisco, and after consideration by the board of commissioners, on the 5th June, 1855, his title was confirmed to the tract of 10,186 acres of said land.

From this confirmation and award an appeal was taken by the law agents of the government to the district court of the United States for the northern district of California, which was heard and adjudged in favor of the claimant on the 17th of April, 1857.

This judgment was appealed to the Supreme Court of the United States, as provided by law, and, upon the final hearing, was reversed at the December term of the Supreme Court, 1859. (See 23 Howard, p. 341.)

The court pronouncing the opinion, among other things, said:

" \* \* \* "In November, 1849, the Padre Santillan, with Dr. Poli, made a journey to Santa Barbara, the place of residence of Covarrubias, and on his return intimated to his friends 'that he had been to the governor, and that the Americans could not rob the church any longer'; that he had the papers 'in which were all his hopes'; that 'he was well off,' and used other exultant expressions, which denote that the acquisition of the deed was newly made, and that a great change was effected by it in his condition and feelings. In the month of March, 1850, he announced to the public of San Francisco that such a grant was in his possession, with other circumstances before detailed, and in the month of April conveyed the land to the claimant.

"The testimony does not disclose what was the depository of this grant in Santa Barbara, nor when, nor under what circumstances it was placed there, nor under what circumstances withdrawn. Neither Santillan nor Dr. Poli have been examined as witnesses; nor was Pio Pico interrogated in reference to the authenticity of the grant. There is no proof to show that any of the conditions of the grant have been fulfilled. The testimony as to the payment of any portion of the mission debts is vague and unsatisfactory. There was no judicial possession sought or obtained, and no claim made for the land, as the grantee thereof, to give the community at large any information concerning it.

"Our opinion consequently is, that the validity of the grant has not been sustained; and that the decrees of the board of commissioners and the district court are erroneous and must be reversed, and that the cause be remanded to the district court, with directions to dismiss the claim."

It will thus be seen that part of the ground of this decision was the determination of the question of the fact, in the mind of the court, that the grant was not genuine, but was a forgery.

After the judgment of the Supreme Court declaring the grant to Santillan to be invalid, the memorialists seem to have discovered, or to have been led to believe, that there was some record relating to said grant in some way deposited with the alcalde of Santa Barbara, which record would be of great value in establishing the validity of the original grant to Santillan.

The book of records kept in the office of the alcalde at Santa Barbara, from the year 1840 to 1848, could not be found, nor could any trace of it be discovered during the pendency of the controversy and prior to the decision of the Supreme Court. It was alleged, however, that it would corroborate the evidence as to the genuineness of the original grant.

Accordingly, after the judgment of the Supreme Court, the secretary of the company went from Philadelphia to California to make further search for it, but his investigations at San Francisco and Los Angeles and Santa Barbara were still unsuccessful. At length the book was found, and was traced into the possession of a citizen who had lived near to Santa Barbara, and who accounted for it by the following facts: At the period of taking possession of that part of California by United States forces, this book, with other documents, had been secreted at his house, and had never been called for, and he neither knew its value nor knew the person who had left it there.

This book of records has been produced before the committee, and is now in its keeping. It is a book of record of proceedings, civil and criminal (in the Spanish language), held before the alcalde of Santa Barbara, from the year 1840 to 1848, inclusive, and contains a memorandum of the Carrilla deed, purporting to be made on the 6th day of April, 1846, in the following words, properly translated:

"This day appeared before me the Señor Curate Don Prudencia Santillan and the citizen Joaquín Carrillo, their object being that this tribunal (*juagado*) under my

charge should make note in this book of records of a title that the said Señor Curate Santillan granted to the said Señor Carrillo for four hundred varas of land in the Mission of Dolores, this 6th day of April, 1846, which shall stand as evidence for the ends and purposes of those interested therein."

The authenticity of this book seems to be clearly demonstrated by evidence submitted to the committee. This book also contains a further entry, apparently written about the same time. It is in the following words, properly translated:

"Having appeared in this tribunal the señor curate-rector and minister of the Mission of Dolores, Don J. Prudencio Santillan, he made known that he desired to place on deposit some important documents that he had with him, so that he might not lose them on his journey from this place to the Mission of Dolores. Said documents consisted of a title given by the Señor Governor Don Pio Pico for three leagues of land in the Mission of Dolores; another, of the approval of the said title by the most excellent departmental assembly; some others, inventories of personal property of the said Mission of Dolores. Said documents remain deposited, making a bundle marked 'Papers belonging to the Señor Curate Don Prudencio Santillan.'"

While the book appears to have been a genuine book of records kept by the alcalde of Santa Barbara, your committee do not indorse the entries therein, translations of which have above been given. There are many circumstances connected with said entries, appearing in the book itself, which might be urged with great force against the genuine character of said entries. The handwriting and the ink differ from all others in the book; the pages on which written, the intervals occurring between the last admitted genuine entry, the blank pages following, the peculiarity of an entry on the same page with the entry last above translated, &c., tend to create doubt as to the genuineness of said entries relating to the Santillan property. But the view your committee takes of the effects of the translated entries, if genuine, makes it unnecessary for them to pass upon the genuineness of the entries above translated, as will be hereafter seen.

The memorialists, while claiming that the judgment of the Supreme Court against them was erroneous upon the proofs as presented, do not, at least in terms, ask relief on that ground, and it has not been deemed by your committee necessary to carefully and elaborately examine and analyze all the proofs or proceedings prior to said judgment.

Your committee have, however, examined the evidence pretty thoroughly, and listened attentively to extended and repeated arguments of able representatives and counsel in behalf of the said memorialists, and such examination and arguments developed nothing, in the opinion of your committee, to justify the opening of the case or the granting of the relief asked.

On the contrary, your committee are of opinion that the grant by Pio Pico was not a valid one, and that Santillan acquired no legal or equitable title in said lands, because—

No proper petition to Governor Pico is shown to have been made by Santillan for said lands.

No inquiry by said Pico is shown to have been made as to the propriety of making such grant. No petition, grant, and map were shown to have been recorded; and yet all these things were required to make a valid grant under the Mexican laws by the regulations of 1828.

The steps or proceedings above enumerated, with some others perhaps—the report of the alcalde to the governor being one—formed what was technically called an expediente; and this expediente it became the duty of the governor to send to the departmental assembly for its approval.

That this was not done, or at least *not shown to have been done*, is clear; for "the first report of the governor to the assembly respecting the disposal of lands made in the year 1846 was of forty-five grants to sundry individuals, and was made the 8th day of May, 1846, and referred to the committee on public lands. The committee reported favorably and the grants were confirmed at the session of June 3. The decree of confirmation includes grants down to May 3, 1846. That to Santillan is not among them"; and yet the grant to Santillan, as has been shown, is claimed to have been made February 10, 1846.

There is proof tending to show the existence of an expediente and grant to Santillan. One Botello swears that he was a deputy of the departmental assembly during the first four months of 1846, and served as one of the committee on public lands, and during that time the original expediente and grant made to Santillan, of the Mission Dolores and its lands, came up for approval, and that the title was duly submitted and approved.

But the records of the departmental assembly in 1846, during the time that Botello was he acted on the committee on public lands, are well preserved.

From these it appears that its first session for 1846 commenced March 2, and on that day Noriega and Arquello were appointed the committee on public lands, and in the session of March 4 Botello obtained leave of absence for a term not exceeding three

months. His absence is usually noted at the end of each day's proceedings, and his name does not again appear as an acting member till June 15. It thus appears he was not a member of the committee on public lands during the year 1846, and his statement to that effect, and that the expediente and grant to Santillan were duly submitted and approved, is utterly unworthy of belief.

Moreno, at one time secretary of state, swears that he saw the record of the grant in the book of titles—Toma de Razon—in August, 1846.

And Arenas swears that it was noted by him in that book of records. That book is lost; but the mere entry of the grant in that book is not sufficient to establish the original validity of the grant, and not proper or sufficient proof that a valid grant was ever made.

In *United States vs. Castro*, 24 Howard, 349, a case decided since this Santillan grant was adjudicated, the court said:

"The grants of portions of the public domain in Mexico, the mode of obtaining them, and the officers by whom they were to be issued, and the conditions to be annexed to them, were with great precision regulated by law. This law has so often been referred to and commented on in former opinions of this court that it is unnecessary to report here its particular provisions. It is sufficient to say that it was required to be in writing, the officers and tribunals before which it was to pass designated, and every step in the process, from the petition of the party to the final consummation of the title, was not only required to be in writing, but also to be deposited and recorded in the proper public office among the public archives of the republic.

"The general rule is that the grant must be found in the proper office among the public archives.

"In order to maintain a title by secondary evidence it must be shown to the satisfaction of the court—

"1st. That the grant was obtained and made in the manner the law required at some former time, and recorded in the proper public office.

"2d. That the papers in the office, or some of them, have been lost and destroyed.

"3d. That within a reasonable time after the grant was made there was a judicial survey of the lands, actual possession taken, and acts of ownership exercised over it."

In *Laco vs. United States*, 23d Howard, 543, also, a later case, the court say:

"In conclusion, \* \* \* no grant of land purporting to have been issued, &c., . . . should be received, &c., unless it be found noted in the registers, or the *expediente*, or some part of it, be found on file among the archives where other and genuine grants of the same year are found; and the testimony of late officers of that government cannot be received to supply or contradict the public records or establish a title of which there is no trace to be found in the public archives."

In view of this law the evidence at the several trials referred to, if unshaken and unquestioned, fails to establish a valid grant to Santillan, and the relief asked for should not, in the opinion of your committee, be granted by reason of anything shown to be existing or done prior to the discovery of said book or record of the alcade of Santa Barbara. And the Santa Barbara book, relied upon by the memorilists as supplying the evidence held essential by the Supreme Court, to wit, governmental archives evidence, if genuine, falls far short of establishing the genuineness of the claim of Santillan, under the rule laid down by that court in many cases.

That Santa Barbara book does not contain any record of any act of the Mexican Government of California. It is but a record of the acts of a municipal officer of the pueblo of Santa Barbara. The entries are not signed, or shown to have been made, by any officer. It is not a record of transfers of real estate, and contains no other entry relating to that subject, and has no force or character as evidence above any private memoranda.

In *Dias vs. United States*, the claim was rejected because no note or memorandum showing that a grant had been made could be found in the governmental archives, although the alleged grant bore the impress of the genuine seal, and the fact of making the grant was sworn to by the officers who made the same.

In view of the long-established and rigidly adhered to rule adopted by the Supreme Court in similar cases, it is scarcely possible that upon a rehearing that court would modify the rule in favor of a claim like this, even though it were free from all suspicion of being based upon antedated and simulated documents; and without such modification this newly-discovered book would not strengthen the claimant's case.

This case of Santillan has been fully and fairly tried and decided by the court of last resort, and its merits considered with reference to the same general rules applicable to all other cases of a similar nature, and there does not seem to be any good reason why this case should be reopened and a new trial granted any more than in any of the numerous other similar cases which have been adjudicated and decided adversely to the claimants.

It would be impolitic to establish a precedent under which so many other claims of a like nature, rejected for like reasons, would be entitled to like relief. The effect would be that titles to lands in California would be greatly disturbed, their value de-



the prosperity of the State checked, and the results obtained after more than twenty years of litigation over these Mexican claims rendered substantially unnecessary, therefore, in view of the whole case, as now presented by the memorial, are of the opinion that the relief asked should not be granted, and recommend that said memorial be laid upon the table, and your committee discharged from further consideration of the subject.

Under that there may be no question as to the purport of the decision of the Supreme Court of the United States in the above case, we adhere hereto the opinion in full. It is to be found in 23 Howard, page 130, and is as follows:

Justice Catron delivered the opinion of the court:

In 1852, the appellee presented his claim to the commissioners for settling claims in California for a parcel of land situated in the county of San Francisco, bounded north by what was formerly known as Yerba Buena; northwest by lands of the Mission of San Francisco; west by the lands of Francisco Haro; south by the lands of the Mission of Dolores; and east by the bay of San Francisco, with a reservation of the lands of the church of Dolores, and other previously-granted lands within the boundaries of the tract, which includes 29,717 acres; and the claims previously within those boundaries are 19,531 acres; leaving as the unquestioned claim of the appellee 10,186 acres. The original claimant is José Prudencio Santillan, a secular priest, together with his general agent, Manuel Antonio Rodriguez de Poli, in 1850, upon the recited consideration of two hundred thousand dollars, conveyed to them, the appellee. An interested party testifies that, in 1851 and in 1854, it was estimated, at a low estimate, more than two millions of dollars. The claim was considered by the board of land commissioners, and in 1857 their decree was affirmed by the district court. The grant of Santillan bears date the 10th February, 1846. Reports to have been made by Pio Pico, "first member of the assembly of the state of California," and charged with the administration of the law in the territory, to be signed by Covarrubias, as secretary. It recites that the priest Santillan petitioned for a grant, for his own benefit, of all the common lands known as belonging to the Mission of Dolores, as well as the houses of the rancherias of the mission, which were in a state of abandonment; and that thereupon the governor had proceeded to grant them, subject to conditions:

1. That he shall pay, as a compensation for said grant, all the debts that exist against the mission.

2. That he shall petition the proper judge for the judicial possession, in virtue of the grant, of all the lands and houses conveyed; and in the mean time the possession of the houses and lands in his capacity of administrator, appointed as such by the prelate of the missions of the College of Our Lady of Guadalupe, in Zacatecas, and the temporalities of the Mission of Dolores, shall serve as legal title.

3. That the judge who shall give the possession shall have it measured and marked with permanent landmarks, the contents being three square leagues, more or less.

4. That the houses of the curate and the church of Dolores, and the property of some persons hold under good titles, shall be respected, and that the title of the mission be respected.

The claimant exhibits a letter from Covarrubias to Santillan, dated 15th January, 1850, which informs him of an order made by the governor to the administrator of the mission, to make formal delivery of all the appurtenances of the Mission Dolores to him, that he (Santillan) may administer the temporalities of the mission.

In March, 1850, Santillan published a notice in a newspaper in San Francisco, which was signed by the governor, Pio Pico, on the 10th February, 1846, had granted to him all the cultivated lands and all the unoccupied houses appertaining to the mission; that the grant was made and is recorded in the city of Los Angeles, and that it was signed by Covarrubias, then secretary of the governor; that in the month of January, 1850, the governor had issued to the administrator of the mission to put José Prudencio Santillan in possession of the temporalities of the mission, which was done; and that he, Santillan, being made one month after, recognizes and refers to this order of the governor, and provides that the possession under the order was for the purposes of the mission. This notice was designed to warn persons from trespassing on the land, or purloining titles from the justice of the peace, acting in the capacity of alcalde in San Francisco. The grant itself was recorded shortly after in the county records of San Francisco, and in May, 1852, the claim was filed, with a petition demanding its confirmation, before the board of land commissioners, sitting at San Francisco.

For support four principal witnesses were relied on, namely: José Maria Covarrubias, Cayetano Arenas, José Matias Moreno, and Narciso Botello. Covarrubias's petition was filed with the petition. He was secretary of the government when the grant was made, and deposes that he wrote the document; that Governor Pio Pico

signed it, and that he, Covarrubias, countersigned it as secretary; all of which was done in the secretary's office at Los Angeles at the time the grant bears date. He says the paper there exhibited was one of those delivered to the party, and that he believes it is a substantial copy, if not a literal one, of an order of the governor for the purposes therein stated.

Arenas states that he was employed as an officer in the office of the secretary of the government; that he saw the grant now filed before the board of land commissioners, produced at the office of the secretary of the government in the month of February, 1846, about the time it bears date. "It is a document given out by the government to Padre Santillan." He declares the signature of the governor and secretary to be genuine; that he saw the document made; also, that had the grant remained in the secretary's office it is probable he should have seen it. Being asked whether a note of the grant was ever made in any book of titles, he answers that there were then only loose sheets of paper kept on which to note titles at Los Angeles, the regular book being at Monterey; and that a note of this title was made on said loose sheets of paper. "I wrote the note of this title myself." The sheets of paper were stitched together.

Moreno proves that he was appointed government secretary as successor of Covarrubias, and came into office on the 1st day of May, 1846, and continued to act as secretary until the country was conquered in July following. He is asked in behalf of the claimant, "While acting as secretary, did you ever see a paper purporting to be a petition of José Prudencio Santillan for a grant of the land of the ex-Mission of Dolores, or any other paper in relation to said grant?" and answers, "I never did."

He further states that he had never seen any such grant or any papers relating thereto. "All I recollect is, that I saw the name of Padre Santillan in the book in which the note of titles was taken; it was on the last page, but I do not know whether it was in relation to a grant or not. The book contained nothing but the notes which were taken of titles."

Narciso Botello deposes that he was a deputy of the departmental assembly during the first four months of 1846, and served as one of the committee on public lands, and during that time the original expediente and grant made to Santillan of the Mission of Dolores, and its lands, came up for action before the assembly; that the title was duly submitted and approved. He swears to its confirmation in the most precise terms. To meet this evidence, it is suggested for the United States that the assembly never acted on sales of land made by the governor of mission property; and this may be true; but the grant to Santillan was not a sale of the Mission of Dolores. It is in form an ordinary colonization grant, made according to the act of 1824, and the regulations of 1828, and under their authority; nor can the recital in it—that Santillan shall pay the debts of the mission—affect the title. The title is vested, whether the debts were or were not paid. The petition and grant were undoubtedly proper papers to be submitted to the assembly for approval.

Under the acts of colonization the records of the departmental assembly in 1846, during the time that Botello says he acted on the committee of public lands, are well preserved. The different meetings and daily proceedings of that body are minuted in regular form in the journals. From these it appears that its first session for 1846 commenced on the 2d day of March, and on that day Norega and Arguilla were appointed the committee on public lands; and in the session of the 4th of March, Señor Botello obtained a leave of absence, for a term not exceeding three months. His absence is usually noted at the end of each day's proceedings; and his name does not again appear as an acting member until the 15th of June. On the first of July he was elected temporary secretary of the assembly, in the absence of Olvera, the regularly appointed secretary. Botello certainly did not belong to the committee of public lands during the year 1846.

The first report of the governor to the assembly respecting the disposal of lands was of forty-five grants to sundry individuals, and was made the 8th day of May, and referred to the committee. The committee reported favorably, and the grants were confirmed in the session of June 3. The decree of confirmation includes grants down to May 3, 1846. That of Santillan is not among them.

The decrees of confirmation are distinct, regular, and definite; and there is no reason to suppose that any grant that had been made was reserved from the assembly. And, in addition, Moreno proves that while he acted as secretary to Governor Pico, he never sent to the departmental assembly any expediente or grant of lands to Santillan. And as it was his official duty to do so, he can hardly be mistaken. We deem it true beyond controversy that Botello was not one of the committee on vacant lands; that the claim of Santillan was not presented to the departmental assembly; and that the statement of Botello in his deposition of his official relation to this grant is without any foundation in truth.

Covarrubias having stated that Padre Santillan filed a petition for a grant of the mission lands of Dolores, and that Governor Pico made an order on which the grant was founded, it becomes necessary to inquire whether such petition and order ever existed in the archives; and, secondly, the probability of their being lost, as not the

slightest evidence now exists in the archives of any petition, order, or the record of a grant.

Moreno states that he took possession of all the archives, when he came into office as successor of Covarrubias. Arenas says this was the next day after Covarrubias had resigned, in February, 1846. Moreno states that it was on the 1st day of May, 1846. It is certain that Moreno submitted to the assembly the titles confirmed in June. He proves that no such papers were ever seen by him; and as he was examined on behalf of the claimant to prove the authenticity of this grant, and whatever might conduce to that end; and as he was interrogated relative to the existence of papers properly connected with it, if authentic, and remaining in the public repository under his official care; and as he denies knowledge of the deposit or existence of such papers, his testimony raised a strong presumption that the requirements of the colonization laws were not complied with on this subject. We are confirmed in this opinion by the examination of other testimony.

Arenas says he took the name of the title and the number and date of the grant; that is to say, of the grant then before him, and then delivered to Santillan. But he says nothing of the petition nor decree conceding the land. All that Covarrubias states is, that there was a petition and decree of the governor, on which papers the grant was founded. But he does not swear that they were filed or recorded.

As respects the probability of a loss of Santillan's title-papers, Moreno proves that when the United States forces suppressed the Mexican Government of California in August, 1846, by order of Governor Pico, he deposited the archives belonging to the secretary's office in boxes, and placed them in the house of Don Louis Vignes, in Los Angeles; and he knows nothing further of them. And Olvera proves that he made a similar deposit of the records of the departmental assembly at the house of Don Louis Vignes. This occurred about the 10th of August, 1846. He says that he then had expedientes in his charge as secretary of the assembly. How many does not appear. Up to this time it is not assumed that any documents were lost.

Commodore Stockton directed the removal of these archives, and for that purpose they were taken possession of by Colonel Frémont; and after some delay and some exposure they were eventually delivered to Captain Halleck, of the United States Army, at Monterey, then acting secretary of state under the military governor of California. Captain Halleck proves that when delivered to him they were in a bad condition, being much torn and mutilated. They were shortly after arranged, numbered, and labeled.

It is a historical fact that the expedientes and grants made for some ten years before the year 1846 are referred to in an index, and in a register known as the *Toma de Razon*; the former made by Manuel Jimeno, who was the government secretary before Covarrubias. And as the title-papers to which reference is made in this index, and the register, are found in the archives as they now exist, it is reasonable to suppose that those expedientes made in 1846 were carried with equal safety, as they came into Colonel Frémont's hands, according to the testimony of Moreno and Olvera, in the same condition; and, according to the testimony of others, they were transported in the same manner, and were continued in the same custody; and it is true that the expedientes of 1846 are apparently as well preserved as the others; but from the loss of the *Toma de Razon*, and the absence of a contemporary catalogue like Jimeno's index, we have not the same assurance of their entire existence.

Be this as it may, the claimant was bound to prove that records showing a substantial compliance with the laws of colonization did exist when the copy he produces was given to Santillan before he could be heard to prove their loss and their contents.

In deciding on this controversy, we are to be governed by the laws and usages of the Mexican Government administered in the department of the Californias (as respects the granting of lands) before the conquest of the country, and according to the principles of equity. These are the rules prescribed by the act of March 3, 1851, section 11.

The laws and usages applicable to this claim are found in the regulations of 1828.

Lands were to be granted "for the purpose of cultivating or of inhabiting them"; and the mode of obtaining a grant is prescribed to be by an address to the governor, setting forth the petitioner's name, profession, &c., describing distinctly, by means of a map, the lands he asks for. Then the governor was to obtain the necessary information whether the petition embraced the legal conditions, both as regards the land and the applicant. This being done, the governor was required to proceed to make an order for the formal grant to be drawn out, which he should execute.

Section 11 directs that a proper record shall be kept of all the petitions presented and grants made, with maps of the lands granted.

This record is the evidence of grant. It being made, the governor (s. 8) shall sign a document and give it to the party interested, to serve as a title, wherein it must be stated that said grant (to wit, *the record*) is made in exact conformity with the provisions of the laws. In virtue of this document issued to the party, possession of the lands shall be given. But the document is not sufficient of itself to prove that the governor has officially parted with a portion of the public domain, and vested the land in an individual owner. This must be established before the board of commissioners

by record-evidence, as found in the archives, or which had been there and has been lost. The titulo given to the party is merely a certificate by the governor of the acts that have been done in the regular course of official procedure toward the disposal of a part of the public domain. Among individuals this certificate serves the purpose of evidence. But when the government institutes inquiries in reference to the subject, it is entitled to require the production of that official record, which it has prescribed to its officer, for its own security, and as a necessary condition of a legal administration, and a necessary precaution against fraud. That a petition was presented by Santillan is stated incidentally, but indistinctly, by a single witness (Covarrubias); and this unsatisfactory statement is disproved by the absence of the record and the evidence of his successor, Moreno. The claim, as presented to the board of commissioners and the district court, has no legal foundation to rest upon.

The degree of record-evidence which is required to support a claim of the above description is considered and adjudged in the case of Cambuston (20 How., 59), and more at large in the decision made at this term in the case of Fuentes against the United States; so that a further consideration on that head is not required in this case.

Such being the *legal* condition of this claim, the next question is, how does it stand on its *equities*?

The grantee is one of the eighteen secular priests who were in California. He arrived at the Mission of Dolores either in 1844 or 1845, probably in the latter year. He was of Indian extraction, and in necessitous and distressed circumstances. A number of witnesses say he subsisted on alms. A grant to a priest for his own benefit is a singular fact in California. The bishop-elect since 1850 says: "I learned that Padre Santillan obtained a grant of land from Governor Pio Pico. I know of no other instance excepting this, and have heard of no other case in which the grant has been made to a priest personally and for his own benefit." Berreyesa, when pressed for the reason for the retention of a casual conversation in his memory for so long a period, says: "It was an unusual thing for a mission to be granted to a padre, for it was thought that the padres could not hold such property, and it seemed strange to me."

But the grant was made to this necessitous padre upon the primary condition that, "in consideration of this grant, he shall pay the debts of the mission which exist up to this time." It would seem that a grant of land with such a condition, to such a person, was a vain thing. There is no testimony to show what the amount of the debt assumed by Santillan was; to whom it was owing; when and how it was contracted; or what security was required for its payment. Neither Pio Pico nor Covarrubias afford the slightest information of the manner in which the consideration was to be paid.

Until the spring of 1850, none of the large community then building up a city on the land in dispute had any suspicion that this poor man claimed to be owner in his own right of ten thousand acres of land, with an outer boundary including three other grants, and embracing nearly thirty thousand acres.

He had made some claim for the church as a priest and administrador of the mission, and had caused the papers of the mission to be examined by a competent lawyer, and endeavored to repel intruders at his door by some title which he supposed might exist among the documents of what had been an important missionary establishment. No title was found which vested this property in the church and superseded the public title; and then this claim was first made known to the public.

There were at that time a thousand settlers on the land claimed, holding their possession and titles by purchases made from a justice of the peace, appointed under the authority of the military government of the United States in California, and who professed to make grants not exceeding fifty varas square, but with a reservation of the claims of individuals and that of the United States. Of course these claimants expected to receive an acknowledgment, or some recognition, of their title by the United States. The Padre Santillan seems to have been much excited by his contest with these occupants. In September, 1849, he constituted O'Connor, an attorney at law, and Salmon, a merchant, his attorneys, and authorized them to enter into possession, for the uses and benefits of the Mission of Dolores, and of which he was pastor, of lands, tenements, and hereditaments, that he had a right to enter into, possess, and enjoy, and the same dispose of by lease, for the benefits and objects of the mission, with all the powers that he possessed by virtue of his pastoral care and tutorship, in his own right and the rights of others represented by him. "He also empowered them to ask, demand, recover, and secure the sum or sums of money now due or owing for occupancy and use of the lands, houses, tenements, and hereditaments belonging to the parties represented by him, or belonging to him, by virtue of his office."

The attorney mentioned in this deed is a leading witness to discredit the genuineness of the grant.

He had no notice or imagination of its existence when this power was accepted. In November, 1849, the Padre Santillan, with Dr. Poli, made a journey to Santa Barbara, the place of residence of Covarrubias, and on his return intimated to his friends "that he had been to the governor, and that the Americans could not rob the church any

longer"; that he had the paper, "in which were all his hopes"; "that he was well off"; and used other exultant expressions, which denote that the acquisition of the deed was newly made, and that a great change was effected by it in his condition and feelings. In the month of March, 1850, he announced to the public of San Francisco that such a grant was in his possession, with other circumstances before detailed, and in the month of April conveyed the land to the claimant.

The testimony does not disclose what was the depository of this grant in Santa Barbara, nor when nor under what circumstances it was placed there, nor under what circumstances withdrawn. Neither Santillan nor Dr. Poli have been examined as witnesses; nor was Pio Pico interrogated in reference to the authenticity of the grant.

There is no proof to show that any of the conditions of the grant have been fulfilled. The testimony as to the payment of any portion of the mission debts is vague and unsatisfactory. There was no judicial possession sought or obtained, and no claim made for the land as the grantees thereof, to give the community at large any information concerning it.

Our opinion consequently is, that the validity of the grant has not been sustained, and that the decrees of the board of commissioners and the district court are erroneous and must be reversed, and that the cause be remanded to the district court, with directions to dismiss the claim.

After a careful examination of this case, we have reached a conclusion wholly different from that of the majority of the committee. In our judgment, the bill should not become a law, for the reasons:

*First.* The evidence is far from satisfactory that a valid grant was ever made by the Mexican authorities to Santillan.

*Second.* The Supreme Court of the United States, having heard this case upon its merits, has decided adversely to the parties who seek relief by the pending bill.

This bill seeks to reverse that finding. That its passage would tend to unsettle land titles in California, to destroy the sanctity of judicial determinations, and to open wide the door to fraudulent claims, we think can hardly be questioned.

We recommend therefore that the bill be rejected by this House.

R. PACHECO.

A. E. STEVENSON.

JNO. W. CALDWELL.



## NAVAL APPROPRIATION BILL.

APRIL 6, 1880.—Recommitted to the Committee on Appropriations and ordered to be printed.

Mr. ATKINS, from the Committee on Appropriations, submitted the following

### REPORT:

[To accompany bill H. R. 5626.]

In presenting the bill making appropriations for the support of the Navy for the fiscal year ending June 30, 1881, the Committee on Appropriations herewith submit the following in explanation thereof:

The estimates from which the bill is made up are to be found in the book of estimates on pages 87 to 96, both inclusive, and amount in all to \$14,509,147.95, to which should be added the further sum of \$94,672.50, recommended by the Secretary of the Navy as necessary for torpedo experiments, hydrographic work, and for the Naval Observatory, making a total of \$14,603,820.45 estimates considered by the committee, of which sum they recommend in this bill, including \$59,309, that is appropriated out of the naval pension fund for the support of the Naval Asylum at Philadelphia, \$14,385,797.70, as necessary for the naval service for the ensuing fiscal year, being a reduction of \$218,023.75 from the estimates.

The naval law of last year appropriated the sum of \$14,029,968.95, including the sum mentioned above for the Naval Asylum, or \$355,828.75 less than is recommended in this bill.

The items increased in this bill over the amounts given for the same purposes for the current year are as follows:

Pay of the navy .....	\$196,725 00
Provisions .....	175,000 00
Civil Establishment, Bureau Provisions and Clothing .....	1,017 25
Expenses of recruiting, &c. ....	5,000 00
Naval Academy salaries .....	1,250 00
General torpedo and torpedo-boat experiments .....	70,000 00
Hydrographic work .....	21,000 00
Naval Observatory expenses .....	2,672 50
Transportation, officers Marine Corps .....	3,000 00
Clothing, Marine Corps .....	9,579 50
Military stores, Marine Corps .....	1,600 00
	<hr/>
	486,844 25

For 1880 there was appropriated for small stores, which are not asked for this year, \$100,000.

The decrease on items in this bill over the last law, added to the above, amount to .....	131,015 50
	<hr/>
Net increase .....	355,828 75





JOHN DOLAN.

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APRIL 6, 1880.—Laid on the table and ordered to be printed.

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Mr. W. E. SMITH, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 726.]

*The Committee on Military Affairs, to whom was referred the bill (H. R. 726) for the relief of John Dolan, beg leave to make the following report:*

Since the introduction and reference of said bill, said committee have been informed, by the annexed communication from the Secretary of War, that John Dolan, sergeant in Company F, Fifth Regiment of Cavalry, was killed in battle September 29, 1879, and therefore said committee ask to be discharged from the further consideration of said bill, and that the same lie on the table.

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WAR DEPARTMENT,  
Washington City, March 8, 1880.

SIR: Returning herewith the copy of the bill (H. R. 726) "to appoint John Dolan, now a sergeant in Company F, Fifth Regiment of Cavalry, a second lieutenant of cavalry, and to place his name on the retired list of the Army," inclosed in your letter of the 28th ultimo, with request for information in the case, I have the honor to inform you that Sergeant Dolan, the soldier named in said bill, was killed September 29, 1879, in action with hostile Ute Indians at Milk River, Colorado.

Very respectfully, your obedient servant,

ALEX. RAMSEY,  
Secretary of War.

Hon. WM. E. SMITH,  
Of Committee on Military Affairs, House of Representatives.



W. H. HELM.

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1880.—Committed to the Committee of the Whole House and ordered to be printed.

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COOK, from the Committee on Military Affairs, submitted the following

## REPORT:

[To accompany bill H. R. 4070.]

*Committee on Military Affairs, to whom was referred the bill (H. R. 4070) for the relief of William H. Helm, Twenty-second United States Infantry, submit the following report:*

Reagent Helm served when a young man, during the last year of the war, in the Confederate army. In 1876 he enlisted in the Seventh United States Cavalry, and served with that command in the Yellowstone and Nez Percé campaign at Canyon Creek, Montana, and against the Indians under Chief Joseph. He was discharged in April, 1878, in excellent character. In July, 1878, he enlisted in the Twenty-second United States Infantry, and is now a corporal in Company B of that regiment, stationed at Fort McKavett, Texas. He has filed with your papers a request to be relieved of the disabilities imposed by the Act of March 3, 1875, c. 1218, Revised Statutes, and in consequence of his long, gallant, and faithful service in the Army of the United States, your committee recommend the passage of the bill.



R. W. BARKLEY.

APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. WHITTHORNE, from the Committee on Naval Affairs, submitted the following

## REPORT:

[To accompany bill H. R. 4842.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 4842) to reinstate R. W. Barkley as cadet-midshipman in the United States Naval Academy at Annapolis, beg leave to report the same back with an amendment, and recommend the adoption of the said amendment and then the passage of the bill.

The facts in this case are, that R. W. Barkley was a cadet-midshipman in the third class in the Naval Academy at Annapolis. He was charged with the offense of "hazing" and found guilty, by a court-martial, which sentenced him to be dismissed. This finding was approved by the then Superintendent of the Academy, and finally by the Secretary of the Navy. This occurred in December, 1876, and Mr. Barkley was dismissed. At the same time two other cadets who were tried for a similar offense, under proceedings precisely similar, were dismissed. Subsequently these two brought their cases for review before the Secretary of the Navy, who referred the record of their trial to the solicitor for the department, who pronounced the findings illegal and void, and that therefore these young gentlemen were still cadet-midshipmen, and so they returned to the Academy.

In the case of Barkley, he had returned to his home, and when he applied to be reinstated was refused permission, for the reason that the supposed vacancy from his Congressional district had been filled by a new appointment. Estopped, as he supposed, by this fact, he has taken no steps till the present, when a vacancy exists in his Congressional district, but, being beyond age and the supposed vacancy having been filled, he encounters a technical legal difficulty in his way, which can only be remedied by legislation; hence the bill in this case.

Your committee are of the opinion that very great injustice has been done Mr. Barkley and that he should be reinstated. In doing so, however, the committee think that his appointment should be credited to his Congressional district, and hence the amendment proposed.

The committee present in support of their conclusions the accompanying letters of the Secretary of the Navy, with the copies of certain records submitted therewith by him, which they ask to be printed. They have a further object in view. It is to show by the record that the court-martial which adjudged young Barkley guilty of "hazing" did so on the most flimsy ground, and to some it would seem exercised authority in the spirit in which "hazing" is conceived.

NAVY DEPARTMENT,  
Washington, February 26, 1880.

SIR: I have the honor to inclose a statement of the facts connected with the appointment and dismissal of R. W. Barkley as a cadet-midshipman. The vacancy at the Naval Academy from the tenth Congressional district of Missouri, caused by Barkley's dismissal, having been filled two years and more, he cannot now be reinstated as if to fill said vacancy. The vacancy at present from the district can, under the law, be filled only on the recommendation of the Representative of the district, or in case of the Representative failing to recommend any one, by the Secretary of the Navy; but in either case Barkley is not eligible for appointment, as his age is beyond the limit fixed by law. His relief, because others similarly situated were reinstated (the vacancies from the Congressional districts from which they were appointed not having been filled at the time of their reinstatement) can only be obtained by a special act of Congress.

Very respectfully,

R. W. THOMPSON,  
*Secretary of the Navy.*

Hon. G. F. ROTHWELL,  
*House of Representatives.*

R. W. Barkley, appointed a cadet-midshipman from the tenth Congressional district, Missouri, June 19, 1875; dismissed for "hazing," December 10, 1876. The vacancy caused by his dismissal was filled by the appointment, June 27, 1877, of W. Y. Slack. Slack's resignation was accepted December 10, 1879.

NAVY DEPARTMENT,  
Washington, March 23, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, asking me to examine the bill (H. R. 4842) "to reinstate R. W. Barkley as cadet-midshipman in the United States Naval Academy at Annapolis"; to give the record of the young man; to state what was done with the other young men implicated with him; and also to give my opinion as to the merits of the case.

The act of Congress approved June 23, 1874, to prevent "hazing" at the Naval Academy provides that "in all cases when it shall come to the knowledge of the Superintendent of the Naval Academy at Annapolis that any cadet-midshipman or cadet-engineer has been guilty of the offense commonly known as hazing, it shall be the duty of said Superintendent to order a court-martial, composed of not less than three commissioned officers, who shall minutely examine into all the facts and circumstances of the case and make a finding thereon; and any cadet-midshipman or cadet-engineer found guilty of said offense by said court shall, upon recommendation of said court, be dismissed; and such finding, when approved by said Superintendent, shall be final; and the cadet so dismissed from said Naval Academy shall be forever ineligible to re-appointment to said Naval Academy."

In the case of R. W. Barkley, cadet-midshipman, tried by court-martial, November 6, 1876, under the foregoing act, under charges and specifications preferred by the Superintendent of the Naval Academy, the court adjudged the accused guilty of the charge, "hazing," and sentenced him to be dismissed from the United States Naval Academy. The record of the court-martial bears the approval of the Superintendent, and Barkley was dismissed December 10, 1876.

In the cases of C. W. Garrett and Joseph Beale, cadet-midshipmen, tried October 23, 1876, and October 30, 1876, respectively, on the same charge, the proceedings, sentence, approval, and dismissal being similar, the naval solicitor reported May 7, 1877, in Garrett's case: "The law requires, before a party thus convicted can be dismissed, that the court shall 'recommend' his dismissal; and the dismissal must be 'upon the recommendation of said court.' In Garrett's case there was no such recommendation, and the dismissal was, therefore, illegal and void; and in contemplation of law Garrett is still a member of the Naval Academy. The 'sentence' of the court is not a 'recommendation,' nor, under the act, has the court any power to sentence, but only to make a finding and a recommendation. This one defect being fatal and incurable, it is not necessary to consider whether the proceedings might be set aside on other grounds."

The Secretary of the Navy, under this opinion, June 9, 1877, disapproved, for irregularity, the proceedings in the case and notified Cadet-Midshipman Garrett to report at the Naval Academy.

In the case of Cadet-Midshipman Beale, the Secretary of the Navy decided, August 31, 1877, as follows: "In pursuance of the rule established by the department June 9, 1877, in the case of Cadet-Midshipman C. W. Garrett, these proceedings are hereby set aside and Cadet-Midshipman Beale will report to the Superintendent of the Navy,

y. The court did not recommend him for dismissal as the law directs, but him to dismissal, which sentence it had no power to pronounce."

being vacancies at the Naval Academy in the Congressional districts from Garrett and Beale were appointed, they were reinstated to fill said vacancies; the case of Barkley, the vacancy at the Academy from the tenth Congressional of Missouri, caused by his dismissal, was filled by the appointment June 27, another cadet-midshipman; hence he could not be reinstated, as the law but one cadet-midshipman at the Naval Academy from each Congressional

Barkley's record was good up to the time of his committing the offense of hazing, my opinion, his case is equally meritorious with those of Garrett and Beale. now a vacancy at the Naval Academy from the tenth Congressional district

Department's letter of the 26th of February last to Hon. Mr. Rothwell is hereturned with bill H. R. 4842.

Very respectfully,

R. W. THOMPSON,  
*Secretary of the Navy.*

W. C. WHITTHORNE,  
*Chairman of the Committee on Naval Affairs,  
House of Representatives.*

NAVY DEPARTMENT,  
*Washington, April 1, 1880.*

have the honor to acknowledge the receipt of your letter of the 24th ultimo, compliance with the request therein made for "the facts in the case of R. W. " to transmit herewith, for the information of the Committee on Naval Affairs of the record of proceedings of the court-martial convened under authority of the act of Congress approved June 23, 1874, in the case of Cadet-Midshipman ; also a copy of a letter addressed to Rear-Admiral C. R. P. Rodgers, Superintendent of the Naval Academy, under date of December 9, 1876, dismissing Mr. Barkley from the Academy.

enclose a copy of the opinion of the late naval solicitor in the case of Cadet-midshipman C. W. Garrett, to which reference is made in my letter of the 23d ultimo, and to the chairman of the Naval Committee.

Very respectfully,

R. W. THOMPSON,  
*Secretary of the Navy.*

JOHN GOODE,  
*Committee on Naval Affairs, House of Representatives.*

NAVY DEPARTMENT, *December 9, 1876.*

The court-martial convened by you for the trial of Cadet-Midshipmen Joseph and R. W. Barkley, of the third class, having convicted them of the offense of "hazing," under the act of Congress approved June 23, 1874, and recommended their dismissal, and you having approved the finding of the court, they are hereby dismissed pursuant to said act, from the Naval Academy.

will carry this order into execution forthwith.

Very respectfully,

GEO. M. ROBESON,  
*Secretary of the Navy.*

Admiral C. R. P. RODGERS,  
*Superintendent Naval Academy, Annapolis, Md.*

of Cadet-Midshipman C. W. Garrett, convicted of hazing and dismissed from the Naval Academy under the act of June 23, 1874 (18 Stats., 203).

It was tried by a court regularly convened under the hazing act.

Facts specified are sufficient to support the charge. The court found him guilty, and, upon convening and revising authority, Rear-Admiral Rodgers, Superintendent of the Naval Academy, approved the finding, and the record shows that the court minutely considered into all the facts and circumstances of the case.

The finding of the court is, in the language of the hazing act, "final," and cannot be reconsidered.

But the law requires, before a party thus convicted can be dismissed, that the court shall "recommend" his dismissal, and the dismissal must be "upon recommendation of said court."

In Garrett's case there was no such "recommendation," and the dismissal was, therefore, illegal and void, and, in contemplation of law, Garrett is still a member of the Naval Academy.

The "sentence" of the court is not a "recommendation," nor, under the act, has the court any power to sentence, but only to make a finding and a recommendation.

This one defect being fatal and incurable, it is not necessary to consider whether the proceedings might be set aside on other grounds.

Respectfully submitted,  
May 7, 1877.

JOHN A. BOLLES,  
*Naval Solicitor.*

*Report of the proceedings of a naval court-martial in the case of Cadet-Midshipman R. W. Barkley.*

UNITED STATES NAVAL ACADEMY,  
Annapolis, Md., Monday, November 6, 1876—10 a. m.

The court met pursuant to adjournment. Present, all the members and the judge-advocate.

The court proceeded to the trial of Cadet-Midshipman R. W. Barkley, of the third class.

The court was cleared to consider the charge and specifications in the case of Cadet-Midshipman R. W. Barkley.

The court being opened, the accused was introduced and was asked if he had received a copy of the charge and specifications preferred against him. He replied that he had. The precept convening the court was then read to the accused by the judge-advocate. (A copy is appended, marked A.) The judge-advocate then read his appointment to the accused. (A copy is appended, marked B.) The accused was then asked if he objected to any member of the court sitting on his trial, to which he replied that he did not.

The judge-advocate was then sworn by the presiding officer, in the presence of the accused, according to law. The members of the court were then sworn by the judge-advocate, in the presence of the accused, according to law.

The accused was then asked by the judge-advocate if he desired counsel. He replied that he did not.

The charge and specifications preferred against the accused were then read to him by the judge-advocate (the original is appended, marked C), and he was called upon to plead.

He entered the following plea:

To the first specification of the charge, "Not guilty."

To the second specification of the charge, "Not guilty."

To the third specification of the charge, "Guilty."

To the charge, "Not guilty."

The prosecution then proceeded as follows:

Commander EDWARD TERRY, U. S. N., was called as a witness for the prosecution, and was sworn by the presiding officer, in the presence of the accused, according to law.

By JUDGE-ADVOCATE:

Question. What is your name, rank, and station?

Answer. Edward Terry, commander, United States Navy, commandant of cadets United States Naval Academy.

Question. Do you recognize the accused; if so, as whom?

Answer. I recognize the accused as Cadet-Midshipman R. W. Barkley, third class.

Question. State to the court what you know of the accused's having been warned of the consequences of hazing.

Answer. Cadet-Midshipman Barkley was a member of the fourth class during the past academic year. The regulations of the Naval Academy which govern all cadets have, since January 1, 1876, contained a paragraph, No. 170, which defines "hazing," cites the punishment for the offense, and refers to the law of Congress concerning it. During the late cruise of the United States ship Constellation the accused was a member of the third class on board, and was present on deck on or about the 6th of September, 1876, when I caused to be read to all the cadets on board certain orders and letters concerning "hazing," by the Secretary of the Navy, the former and present Superintendents of the Naval Academy, and by myself; also, the law of Congress concerning it. On the 18th of September, subsequent to the landing of the cadets from



the practice ship, Superintendent's order No. 103 (a copy is appended, marked D) was read at dinner-formation. Copies were afterwards posted on two bulletin-boards of the new building, and in three of the lower buildings. This order defines "hazing," warns the cadets of the penalty attached to it, quoting the law of Congress in regard to it.

The accused having no questions to ask the witness, and the court having none to ask him, his testimony was read over to him, by him pronounced correct, and he withdrew.

Cadet-Midshipman A. S. COOKE, fourth class, was then called as a witness for the prosecution, and was sworn by the presiding officer, in the presence of the accused, according to law.

The witness was here warned by the presiding officer as to the nature and obligations of the oath he had taken, and was cautioned that he was to tell all that he knew in regard to the questions put to him, and that he was not to consider himself the judge of what was pertinent or not.

By JUDGE-ADVOCATE:

Question. What is your name, class, and station?

Answer. A. S. Cooke, cadet-midshipman, fourth class, United States Naval Academy.

Question. Do you recognize the accused; if so, as whom?

Answer. Yes, sir; as Mr. Barkley, cadet-midshipman, third class.

Question. Did you see the accused on or about the 1st of October of this year?

Answer. Yes, sir.

Question. State the circumstances fully to the court.

Answer. In my room, No. 65, new quarters, my room-mate and I were studying; the accused came in; looked at me in a peculiar manner, which made me laugh. He then told me to stop laughing. I didn't stop; I don't remember whether I said I couldn't help it or not. Then the accused asked me if I knew how to stop it; I told him I did not. He said that he knew a way, and then took up a book—I don't remember his exact words—and said, "Suppose we try this." So he put the book toward my mouth; I opened my mouth and put it in. The accused then went out, and I believe I took the book out of my mouth myself.

Question. Were there any other cadet-midshipmen participating with the accused?

Answer. No, sir.

Question. Who else were in the room besides yourself and the accused?

Answer. My room-mate, Mr. P. D. Haskell.

Question. How near your mouth did the accused put the book?

Answer. Within about an inch of it.

The judge-advocate having no more questions to ask, the accused stated that he had none. The court then questioned the witness as follows:

By the COURT:

Question. Explain fully how the book came to be put in your mouth.

Answer. The accused put the book within an inch of my mouth, and I put my head forward and opened my mouth and took it in; I didn't touch the book with my hand until afterwards, when I took it out.

The court having no more questions to ask, the testimony of the witness was read over to him, by him pronounced correct, and he withdrew.

Cadet-Midshipman J. B. BERNADORE, fourth class, was then called as a witness for the prosecution, and was sworn by the presiding officer, in the presence of the accused, according to law.

The presiding officer here cautioned the witness as to the nature and obligations of the oath he had taken, and warned him that he must tell all in regard to the questions put to him, and that he was not to consider himself the judge of what was pertinent or not.

By JUDGE-ADVOCATE:

Question. What is your name, rank, and station?

Answer. J. B. Bernadore, cadet-midshipman, fourth class, United States Naval Academy.

Question. Do you recognize the accused; if so, as whom?

Answer. Yes, sir; as Cadet-Midshipman Barkley, of the third class.

Question. Did you see the accused on or about the 1st of October, 1876?

Answer. Yes, sir.

Question. State the circumstances fully to the court.

Answer. One evening after 9.30, the accused came to my quarters, room 63, new quarters. At the time there were in the room Cadet-Midshipmen Norton, fourth class, Alger, fourth class, and I think Cadet-Midshipman Murray, fourth class. When the accused entered the room we arose, and after some few words, he ordered me to stand

in the corner facing the wall, which I did. After having remained there for a few minutes, during which time the accused left the room, I came out from the corner.

Question. What was the import of these few words the accused uttered?

Answer. I don't recollect exactly; the general import was as if the accused had asked me if I knew who he was, and as if I had answered "no" or "yes."

Question. Were there any other cadet-midshipmen participating with the accused?

Answer. No, sir.

The judge-advocate having no more questions to ask, the accused here stated that he had none, and the court examined the witness, as follows:

By the COURT:

Question. Why did you obey the order you have said the accused gave you, to stand with your face to the wall?

Answer. I felt that I was obliged to. If I had not obeyed the order, I thought probably I would have been compelled to.

The court having no more questions to ask the witness, his testimony was read over to him, by him pronounced correct, and he withdrew.

Cadet-Midshipman P. D. HASKELL, fourth class, was then called as a witness for the prosecution, and sworn by the presiding officer in the presence of the accused, according to law.

The presiding officer here cautioned the witness as to the nature and obligations of the oath he had taken, and warned him that he was to tell all he knew in connection with the questions put to him, and that he was not to consider himself the judge of what was pertinent or not.

By JUDGE-ADVOCATE:

Question. What is your name, rank and station?

Answer. P. D. Haskell; cadet-midshipman, fourth class, United States Naval Academy.

Question. Do you recognize the accused; if so, as whom?

Answer. As Mr. Barkley, cadet-midshipman, third class.

Question. Did you see the accused on or about October 1, 1876, in Cadet-Midshipman A. S. Cooke's room?

Answer. Yes, sir.

Question. State to the court, fully, what occurred there.

Answer. One day the accused came into the room and folded his arms and looked out of his eyes in a peculiar manner at my room-mate. This caused my room-mate, Mr. A. S. Cooke, fourth class, to laugh, and, to the best of my recollection, the accused put a book in Mr. Cooke's mouth. Some further circumstances occurred which I do not remember now, and then the accused went out.

Question. Explain, fully, how the accused put the book in Mr. Cooke's mouth.

Answer. To the best of my recollection, the accused asked my room-mate, Mr. Cooke, if he thought a book would stop his laughing. Then the accused held out a book to my room-mate and he (my room-mate) took it in his mouth.

Question. How near Mr. Cooke's mouth did the accused hold the book?

Answer. About a foot, I think.

Question. How did Mr. Cooke take the book in his mouth?

Answer. To the best of my recollection, he took the book in his hand and put it in his mouth.

The judge-advocate having no more questions to ask, the accused here stated that he had no questions to ask the witness. The court having none to ask, the testimony of the witness was read over to him by him pronounced correct, and he withdrew.

The prosecution here closed.

The accused having no witnesses to call in his defense, requested that he be allowed till to-morrow, Tuesday, November 7, 1876, at 11 a. m., to prepare his written defense.

The court granted the request in open court. Then, at 12.45 p. m., the court adjourned till to-morrow, Tuesday, November 7, 1876, at 11 a. m.

J. A. HOWELL.

*Commander and Presiding Officer.*

J. B. BRIGGS,

*Lieutenant and Judge-Advocate.*

UNITED STATES NAVAL ACADEMY,  
Annapolis, Md., Tuesday, November 7, 1876—11 a. m.

The court met pursuant to adjournment. Present, all the members, the judge-advocate, and the accused.

The record of the proceedings of yesterday was read over and approved.

The presiding officer then announced to the accused, Cadet-Midshipman R. W. Barkley, third class, that the court were prepared to receive his written defense, whereupon Cadet-Midshipman R. W. Barkley submitted to the court a paper for their inspection, and the court was then cleared for that purpose.

The doors being opened and the accused present, he was informed that the court were ready to hear his defense, which was read by the judge-advocate, marked E, and placed in the appendix.

The defense here closed.

The judge-advocate submitted the case to the court without remark, and the trial closed.

The court was then cleared, and such portions of the testimony on record as the members indicated having been read over by the judge-advocate, the court proceeded to deliberate upon the testimony and to consider of its finding upon the charge and specifications before it; and after full and mature consideration of all the evidence, and in the case of the accused, Cadet-Midshipman R. W. Barkley, third class, as follows:

The first specification of the charge proven, in so much as the accused, after having been carefully warned of the consequences of "hazing," did, on or about the 1st October, 1876, at the cadet quarters in the Naval Academy, engage in the offense commonly known as "hazing," by going into a fourth-classman's room and thereby subjecting Cadet-Midshipman A. S. Cooke, of the fourth class, to indignity by causing him to hold a book in his mouth to stop his smiling.

The second specification of the charge proven, with the exception of the words "with certain other cadet-midshipmen" and "and assist."

The third specification proven by plea.

And the court do adjudge the accused, Cadet-Midshipman R. W. Barkley, of the third class, United States Naval Academy, guilty of the charge.

And the court do, therefore, sentence the accused, Cadet-Midshipman R. W. Barkley, of the third class, United States Naval Academy, to be dismissed from the United States Naval Academy.

J. A. HOWELL,  
*Commander and Presiding Officer.*

W. T. SAMPSON,  
*Commander and Member.*

CHARLES H. BAKER,  
*Chief Engineer and Member.*

M. MILLER,  
*Lieutenant-Commander and Member.*

B. H. MCCALLA,  
*Lieutenant-Commander and Member.*

J. B. BRIGGS,  
*Lieutenant and Judge-Advocate.*

Then, at 12.15 p. m., the doors being opened, the court took a recess till 2.30 this p. m.

Approved.

C. R. P. RODGERS,  
*Rear-Admiral, Superintendent United States Naval Academy.*

A.

UNITED STATES NAVAL ACADEMY,  
Annapolis, Md., October 17, 1876.

SIR: By virtue of the authority vested in me, contained in the act of Congress "to prevent hazing at the Naval Academy," approved June 23, 1874, a court-martial is hereby ordered to convene at the Naval Academy, at eleven o'clock on the morning of Saturday, the 21st of October, 1876, or as soon thereafter as practicable, for the trial of Cadet-Midshipmen F. A. Woodworth, R. W. Barkley, third class, C. W. Garrett and H. C. Poundstone, second class, of the United States Naval Academy, and such other cadets as may be legally brought before it.

The court is to be composed of the following-named officers, any three of whom are

empowered to act, viz: Commander J. A. Howell, U. S. N., Commander W. T. Sampson, U. S. N., Chief Engineer C. H. Baker, U. S. N., Lieut. Commander M. Miller, U. S. N., Lieut. Commander B. H. McCalla, U. S. N., and Lieut. J. B. Briggs, U. S. N., judge-advocate.

I am, very respectfully, your obedient servant,

C. R. P. RODGERS,  
*Rear-Admiral, Superintendent.*

Commander J. A. HOWELL, U. S. N.,  
*Naval Academy.*

I certify that the above is a true copy of the original.

J. B. BRIGGS,  
*Lieutenant and Judge-Advocate.*

B.

UNITED STATES NAVAL ACADEMY, *October 17, 1876.*

SIR: A court-martial, of which you are appointed judge-advocate, is ordered to convene at the Naval Academy, at 11 o'clock, on Saturday, the 21st October, 1876, at which time and place you will appear and report yourself to the presiding officer of the court.

I am, very respectfully, your obedient servant,

C. R. P. RODGERS,  
*Rear-Admiral, Superintendent.*

Lieut. J. B. BRIGGS, U. S. N.,  
*Naval Academy.*

I certify that the above is a true copy of the original.

J. B. BRIGGS,  
*Lieutenant and Judge-Advocate.*

*Charge and specifications of a charge preferred by Rear-Admiral C. R. P. Rodgers, U. S. N., Superintendent United States Naval Academy, Annapolis, Md., against Cadet-Midshipman R. W. Barkley, a member of the third class of the said Naval Academy.*

CHARGE

"Hazing," in violation of an act of Congress approved June 23, 1874.

*Specification I.*—In this, that the said Cadet-Midshipman R. W. Barkley, U. S. N., a member of the third class of the United States Naval Academy, Annapolis, Md., after having been carefully warned of the consequences of "hazing," did, with certain other cadet-midshipmen, on or about the 1st of October, 1876, at the cadet quarters in the Naval Academy, engage and assist in the offense commonly known as "hazing," by going into a fourth-classman's room and thereby subjecting Cadet-Midshipman A. S. Cooke, of the fourth class, to indignities, asking him "if he knew the cure for smiling," and then thrusting a book in the mouth of Cadet-Midshipman Cooke to stop his smiling.

*Specification II.*—In this, that the said Cadet-Midshipman R. W. Barkley, U. S. N., a member of the third class of the United States Naval Academy, after having been carefully warned of the consequences of "hazing," did, with certain other cadet-midshipmen, on or about the 1st of October, 1876, at the cadet quarters in the Naval Academy, engage and assist in the offense commonly known as "hazing," by going into the room of Cadet-Midshipman J. B. Bernardon, of the fourth class, and cause him to stand in the corner with his face to the wall, thereby rendering him ridiculous.

*Specification III.*—In this, that the said Cadet-Midshipman R. W. Barkley, U. S. N., a member of the third class of the United States Naval Academy, after having been carefully warned of the consequences of "hazing," did, with certain other cadet-midshipmen, between the 23d of September, 1876, and the 7th of October, 1876, engage and assist in the offense commonly known as "hazing," by going into the room of a fourth-classman, and did there cause Cadet-Midshipman J. B. Murray, of the fourth class, to stand in the corner with his face to the wall, thereby rendering him ridiculous.

C. R. P. RODGERS,  
*Rear-Admiral, Superintendent Naval Academy.*

Witnesses: Cadet-Midshipmen Norton, Bernardon, Algor, Cooke, A. S., Haskell Murray.

I certify that a true copy of this charge and specifications was furnished the accused Cadet-Midshipman R. W. Barkley, third class.

J. B. BRIGGS,  
*Lieutenant and Judge-Advocate.*

D.

[Order No. 103.]

UNITED STATES NAVAL ACADEMY,  
Annapolis, Md., September 14, 1876.

the information of the cadets, the law in relation to "hazing" at the Naval Academy is herewith republished.

Cadets are also reminded of the painful experience of last year, and of the disfigurement of several of their number, for this offense of hazing, which they vainly sought to disguise under the name of "running."

New cadets are not to be maltreated, harrassed, rendered ridiculous, subjected to humiliations, or in any way molested, on penalty of being arraigned before a court-martial upon the charge of "hazing."

C. R. P. RODGERS.

*Rear-Admiral, Superintendent.*

Following is the act of Congress, approved June 23, 1874 :

## HAZING.

CHAP. 453.—AN ACT to prevent hazing at the Naval Academy.

Enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases where it shall come to the knowledge of the Superintendent of the Naval Academy, at Annapolis, that any cadet-midshipman or engineer has been guilty of the offense commonly known as hazing, it shall be the duty of said Superintendent to order a court martial, composed of not less than five commissioned officers, who shall minutely examine into all the facts and circumstances of the case, and make a finding thereon; and any cadet-midshipman or cadet found guilty of said offense by said court shall, upon recommendation of said court, be dismissed; and such finding, when approved by said Superintendent, shall be final; and the cadet so dismissed from said Naval Academy shall be forever ineligible to reappointment to said Naval Academy.

Approved, June 23, 1874.

Copy the above to be a true copy of the original.

J. B. BRIGGS,

*Lieutenant and Judge-Advocate.*

E.

The accused does not propose to enter into a discussion of the merits of the charges, but desires to point out a few facts elicited during the examination of the witnesses. In his declaration I says, that the accused thrust a book in the mouth of cadet-midshipman Cooke, A. S., of the fourth class.

Mr. Cooke, in his testimony, says in reference to this charge that the accused put a book in the mouth of his (Mr. Cooke's) mouth and that the witness put his head forward and opened his mouth and took the book in. Mr. Haskell says, in answer to a question by the judge-advocate, that the accused held out a book toward Mr. Cooke, and that Mr. Cooke took it in his mouth; and Mr. Haskell further states that the book was about one foot from Mr. Cooke. Mr. Haskell stated that to the best of his recollection the accused put a book in the mouth of Mr. Cooke, and then, when called on to state fully the circumstances of putting the book in Mr. Cooke's mouth, (said) to the best of his recollection, Mr. Cooke took the book in his hand and put the book in his mouth "himself." Mr. Cooke testifies that he did not take hold of the book with his hands to put it in his mouth.

Mr. Haskell, when told to tell all he knew in regard to the circumstances of the case, said that the accused to the accused "looked in a peculiar manner at Mr. Cooke; this caused my room-mate to laugh, and to the best of my (Mr. Haskell's) recollection, the accused put a book in the mouth of Mr. Cooke." Mr. Haskell was asked to explain what he saw in regard to putting the book in Mr. Cooke's mouth. Mr. Haskell answered that the accused asked Mr. Cooke if the book would stop his laughter, and that Mr. Cooke said it would, and that the accused then held out a book to Mr. Cooke.

In answer to the first question, to state all he knew, Mr. Haskell omitted the conclusion. By his oath, which was carefully explained to him by the president of the court, the witness was sworn to tell everything he knew in regard to the charge, yet he omitted a portion, which was only brought out by subsequent questions.

Mr. Haskell says that the accused asked Mr. Cooke if the book would stop his laughter, and that Mr. Cooke answered affirmatively. Mr. Cooke says that when the ac-

cused asked him if he (Mr. Cooke) knew how to stop his laughing, that he answered in the *negative*.

Mr. Cooke testifies that the accused did *not* put the book in his mouth, and Mr. Haskell first said that the accused *put* the book in Mr. Cooke's mouth, and when again questioned said that Mr. Cooke took the book in his hand and *put* in his mouth himself.

The law says that a simple denial of an accusation shall be held sufficient until the accusation is supported by the evidence of one or more witnesses. As the accused plead "not guilty" to the specification in question, it is sufficient, as the specification is unsupported by evidence.

According to the laws governing evidence at courts-martial, all new matter which came out and which is not specified in the charge should not be taken into consideration by the court when deliberating on the evidence for the purpose of arriving at a verdict.

According to the testimony of Mr. Cooke, the accused did not put the book in his mouth; and Mr. Haskell first says that the accused did not put the book in Mr. Cooke's mouth, and again says that Mr. Cooke put the book in his own mouth, Mr. Haskell thus contradicting himself.

Mr. Cooke said that the book was held about an inch from his mouth, and that he *did* not take hold of the book with his hand, and Mr. Haskell said that the book was about one foot from Mr. Cooke's mouth, and that Mr. Cooke took the book in his hand and put it in his mouth himself.

R. W. BARKLEY.  
*Cadet-Midshipman, Third Class.*



## RANK OF ENGINEER OFFICERS IN THE NAVY.

APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. WHITTHORNE, from the Committee on Naval Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 5627.]

The Committee on Naval Affairs, to whom was referred bill H. R. 1439, beg leave to report the same back with a substitute therefor. They recommend the adoption of the substitute.

The original bill has apparent merit, in that it seeks to re-enact what was omitted by the revisers of the statutes in their codification of the laws of the United States, yet it seems to the committee in their review of the statutes that the revisers substantially adopted the intent and purpose of the law-makers.

In fixing the grade and rank of officers of the Navy, the question of the relative rank of the staff presented some very sensitive questions, in part arising from the fact that staff officers, being appointed from civil life, could not, without authority of law, be credited with the period of pupilage, as in case of the line officers graduating at Annapolis; hence, with the purpose of securing harmony and doing justice in fixing questions of precedence, &c., as it seemed to the then legislators, it was provided by law that the staff officer should be credited or allowed "six years" as of service, when it was provided by law that engineer-officers should be appointed to the Naval Academy, and should have and receive the same period of instruction as cadet-midshipmen; and an effort was made by act of June, 1873, to preserve the harmony intended by the act of March, 1871. This purpose is manifest. Yet, if the "word" is followed, the "spirit" thereof is killed, as is apparent; since, if the original bill is allowed to pass, it will, in the opinion of your committee, evade the true intent and meaning of the act of 1871 for the benefit of a few engineer officers appointed in 1866, and at the expense of a larger number of equally meritorious officers.

The operation of this bill upon the service, and the reasons which induce your committee to recommend the adoption and passage of the accompanying substitute, are to be found in the letter of the honorable Secretary of the Navy, herewith submitted as an appendix to this report, and which your committee ask to be printed as a part thereof.

NAVY DEPARTMENT,  
Washington, February 21, 1880.

SIR: I have the honor to acknowledge the receipt of your letter inclosing bill H. R. 1439, "to amend section 1484 of the Revised Statutes, in order to preserve the meaning of the original law from which it was taken with reference to the rank of engineer

officers graduates of the Naval Academy," and making certain inquiries of me in connection therewith.

The law regulating the precedence of staff officers in their several grades and corps, and with officers of the line of the Navy, is embraced in sections 1484, 1485, and 1486 of the Revised Statutes.

By the statute of March 3, 1871 (section 1486, Revised Statutes), it was provided that in estimating the length of service for the purpose of determining precedence, the several officers of the staff corps should, respectively, take precedence in their several grades and with officers of the line of the Navy with whom they hold relative rank who have been in the naval service six years longer than such staff officers have been in said service. In enacting this provision, which gave the benefit of six years of constructive service in determining the question of precedence among officers, it seems to have been the intention of Congress to equalize the rank of the officers of the staff with those of the line, by giving them a period which would be supposed to answer to the time which was expended by the line officers during the course of study at the Naval Academy, four years, and in the grade of midshipman about two years, before reaching the grade of ensign, which is the relative rank of staff officers upon their original appointment from civil life to the lowest grades in the staff corps.

Under the provisions of section 1485 of the Revised Statutes, the precedence of staff officers, in their several grades and corps and with officers of the line of the same relative grade, is determined by *length of service in the Navy*.

By the construction then given to the regulations of the Navy, six years was expended by the line officers in their education at the Naval Academy and service in the grade of midshipman before attaining the rank of ensign, and which period was counted as service in the Navy. It was undoubtedly deemed proper to fix this (six years) as the time which should be given to the staff officers in order to equalize their rank with that of the line officers of the same relative grade.

At this time certain engineer officers were educated at the Naval Academy, and, in determining the question of rank, should such engineer officers graduates of the Naval Academy be allowed the constructive service of six years, they would obtain a great advantage over the line officers, because the term of their education at said Academy would be counted as a term of service, and, in addition to that, they would have what has been termed the fictitious or constructive term of service allowed to the officers of the staff corps appointed from civil life. The act of March 3, 1873 (section 1484, Rev. Stats.) therefore provided that engineer officers graduated at the Naval Academy should take precedence with all other officers with whom they held relative rank according to *actual length of service in the Navy*.

While, therefore, in the Revised Statutes, section 1484 precedes section 1486, it is in fact a limitation or exception to section 1486, and when thus read together it will be seen that all staff officers are entitled to the benefit of the six years' term of constructive service, with the exception of *those engineer officers who graduate at the Naval Academy*, and whose term of service, like that of line officers, begins at the commencement of the period of their education, and not, as with other staff officers, at the time when they actually enter upon their staff duties.

This bill (H. R. 1439) proposes to allow to the engineer officers graduated at the Naval Academy, who entered the academy prior to March 3, 1873, in addition to the time expended by them in their education at the academy, six years' constructive service in estimating their length of service in the Navy, for the purpose of establishing their precedence and relative rank with other officers of the same relative grade. The effect of the legislation proposed by this bill would be to give to about twenty-two engineer officers graduates of the Naval Academy six years' precedence of line officers who entered the Naval Academy in the same year with them, and relative rank with line officers who entered the academy six years before such engineer officers were appointed. This would be an exception to the general rule prescribed by sections 1484 and 1486 of the Revised Statutes, which establishes precedence and rank in grades, and, in the opinion of the department, no reason exists why this advantage should be accorded to those officers; and, as they already have precedence and relative rank equal to that of line officers who entered the Naval Academy at the same time, such a provision of law would greatly disturb the harmony of the service.

At the time of the passage of the act of March 3, 1873 (section 1484, Rev. Stats.) quite a number of engineer officers graduated at the Naval Academy had been commissioned as assistant engineers, and from time to time since that date persons have been appointed from civil life and commissioned as assistant engineers in the Navy—these latter not being graduates of the Naval Academy, and under the provisions of section 1486 Revised Statutes entitled as staff officers to the six years' constructive service; and in consequence of which some of them claim precedence over other officers of the same grade in their corps who graduated at the Naval Academy, and whose commissions as assistant engineers antedate those of such assistant engineers appointed from civil life.

As the engineers are the only staff officers graduated at the Naval Academy, I in-



attention to page 68 of the Navy Register for 1879 to illustrate the operations 1484, 1485, and 1486 of the Revised Statutes, and, for that purpose, to the names of Robert R. Leitch, who is the senior assistant engineer, with five rank of ensign, and of J. P. Stuart Lawrence, standing twenty-two on list of assistant engineers. The former is a graduate of the Naval Academy, service in the Navy commenced from the date of his appointment thereto, October 1871, and he was commissioned an assistant engineer January 23, 1874. The rank of assistant engineer is that of master or ensign, according to length of in the Navy; and, whether that of master or ensign, their relative rank is determined by the rank of officers of the line who entered the Naval Academy the same as such engineer officers. Line officers of the Navy, as a class, entering the in 1871, are ensigns; the relative rank, therefore, of Mr. Leitch, who entered the Academy in 1871, is that of ensign. The latter (Mr. Lawrence) was appointed from civil life and commissioned an assistant engineer March 22, 1875; and as a graduate of the Naval Academy, he is, under the provisions of section of the Revised Statutes, entitled to six years' constructive service in estimating his service for the purpose of determining his precedence and relative rank with officers of the same relative grade. Under the section last above mentioned precedence takes precedence and relative rank with line officers of the same relative who entered the Naval Academy six years before he was appointed assistant-engineer (March 22, 1875), namely, March 22, 1869.

Officers who entered the Naval Academy in 1869 have the rank of master; consequently the relative rank of Mr. Lawrence is that of master; senior, however, to the officers of that rank who entered the Naval Academy in the summer of that

Lawrence, therefore, who entered the Navy about four years after Mr. Leitch appointed to the Naval Academy and fourteen months after he (Leitch) was commissioned assistant engineer, is a grade higher in relative rank than Mr. Leitch. It will be seen that officers of the engineer corps graduated at the Naval Academy, and whose commissions in their grades antedate those of officers subsequently appointed from civil life in the same grade and corps, are, in some instances, lower in relative rank, as determined by the provisions of the sections of the Revised Statutes referred to. In consequence of this, claims have been made by engineers appointed from civil life to be advanced in their grade over graduates of the Naval Academy whose commissions in that grade are of a prior date, and claims are advocated by them on the ground that they are entitled by law to a relative rank higher than such graduates.

It is not thought that it was the intention of Congress, by the acts of March 3, 1871, and March 3, 1873, to advance the staff officers in their grades and corps, but, on the contrary, that the object of those acts was to equalize the rank of line and staff

important and necessary to the harmony and efficiency of the service that the provisions of the sections of the Revised Statutes referred to which is inconsistent with military usage should be corrected by legislation directed to that end. I take pleasure, therefore, of offering as a substitute for bill H. R. 1439 the following:

To amend section fourteen hundred and eighty-six of the Revised Statutes of the United States, enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fourteen hundred and eighty-six of the Revised Statutes of the United States be amended by inserting after the word "service," in line six and six, the words, "Provided, That nothing in this section shall be so construed as to give to any officer of the staff corps precedence of or a higher relative rank than that of another staff officer in the same grade and corps and whose commissions in such grade and corps antedates that of such officer."

Original bill and accompanying papers are herewith returned.

Very respectfully,

R. W. THOMPSON,  
Secretary of the Navy.

W. C. WHITTHORNE,  
Chairman of Committee on Naval Affairs,  
House of Representatives.



DR. JOSEPH TAYLOR.

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APRIL 6, 1880.—Laid on the table and ordered to be printed.

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Mr. DAVIDSON, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 4019.]

*The Committee on Naval Affairs, to whom was referred bill H. R. 4019, beg leave to report:*

That having duly considered said bill, it is the opinion of the committee that it should not pass.

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## PURCHASE OF TOBACCO FOR NAVY.

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APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. GOODE, from the Committee on Naval Affairs, submitted the following

### R E P O R T :

[To accompany bill H. R. 4477.]

The Committee on Naval Affairs, to whom was referred bill H. R. 4477, beg leave to report that they have had the same under consideration, and recommend that it be passed, with the following amendments:

In the sixth line of the bill, strike out the word "and" and insert the word *or*.

In the fifteenth line, strike out all after the word "furnish" and insert the following: *The lowest bid for furnishing tobacco equal to the United States Navy standard now in use shall be accepted.*

With these amendments the committee are of opinion that the passage of the bill would be beneficial to the Navy and just to the manufacturers, as it would secure fair competition and enable those to obtain contracts who can manufacture the Navy standard of tobacco at the cheapest rates.



## MACHINISTS IN THE NAVY.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. GOODE, from the Committee on Naval Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 5628.]

*The Committee on Naval Affairs, to whom was referred the bill (H. R. 3821) providing for the permanence of machinists in the Navy after certain re-enlistments, beg leave to report:*

That they have had the same under consideration, and recommend the adoption of the accompanying substitute. The committee call attention to the letter of the Secretary of the Navy, as embodying their views upon the subject-matter referred to in said bill.

NAVY DEPARTMENT,  
Washington, February 19, 1880.

SIR: I have examined bill H. R. 3821, presented by you to the department for its views thereon, providing for the permanence of machinists in the United States Navy after certain enlistments.

The enlistment of machinists to do the duty of assistant engineers was determined on ten or twelve years ago. There was no statute establishing such a rate in the Navy or fixing the pay thereof. Under authority given the President by law to fix the pay of petty-officers and seamen in the Navy, he fixed the pay of machinists at \$75 a month.

The system of enlisting machinists for the purpose above stated was rather an experimental one, and in its operation does not appear to have given satisfaction. The engineers in charge of machinery on board vessels in commission, and where machinists have been placed in the responsible position of standing on engine-room watch, have generally condemned the system, and many of the injuries to engines, boilers, and their dependencies have been attributed and traced to the inefficiency, inexperience, and want of knowledge on the part of the machinists. The heads of the Bureau of Steam-Engineering have all reported against the system.

The duty which has been assigned to machinists can be carried on more efficiently by responsible and educated engineer-officers of the Navy, and it is better for the service that our cadet-engineers and assistant engineers should discharge this duty altogether. They can then be held directly responsible for any disasters which may occur, or any injuries which may be sustained, in the steam department, and not be able to shift the responsibility to machinists under them, as may now be the case.

A class of cadet-engineers is annually graduated from the Academy and sent at once to sea for service in the engine-room of vessels, and, after a two years' cruise, are appointed assistant engineers. From this source, and the occasional appointment of qualified candidates from civil life, the Navy will secure all the engineer officers required for the service. There will be no actual necessity for machinists, as was the case, to some extent, when the system of enlisting them was introduced. Such subordinate assistance as may be needed in the engineer's department of vessels and stations can be performed by first-class firemen, and thus save \$522 a year for each machinist that is in the service at the present time. The pay of a machinist is \$900 a year, and that of a first-class fireman, \$378.

On the 20th of November last an order was given to suspend the enlistment or re-

enlistment of machinists, and, by reason of the expiration of the terms of enlistment of those now in the service, this class of employes will, at no very distant day, be removed from the Navy.

In view of all the facts in the case and the unsatisfactory experience with the system of enlisting and employing machinists, I cannot recommend the passage of this bill, which proposes to engraft upon the Navy a permanent corps of this class.

There are among the machinists in the service many good and faithful men, who have performed their duties with zeal and with all the ability and educational advantages they possessed. It would, therefore, seem to be a harsh measure to throw them out of employment without some substantial recognition of their past services, and I would, therefore, recommend suitable legislation to provide such recognition.

Those who have received three honorable discharges and three good-conduct badges, having served three consecutive enlistments, might receive a gratuity of one year's pay, with other emoluments now allowed to enlisted men; and those who have served one and two consecutive enlistments, whose conduct entitles them to an honorable discharge on the expiration of their present enlistment, might be allowed a proportionate sum.

This benefit might be extended to those who have been discharged under like circumstances since the orders of the department suspending further enlistments. Thus they would not be thrown out of employment after long and faithful service without some means of temporary support.

If desired, a draft of a bill embracing these features can be prepared and sent to you.

Very respectfully,

R. W. THOMPSON,  
*Secretary of the Navy.*

Hon. JNO. GOODE,  
*Committee on Naval Affairs, House of Representatives.*

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## ADMISSION INTO THE NAVAL ACADEMY.

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APRIL 6, 1890.—Laid on the table and ordered to be printed.

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Mr. BRIGGS, from the Committee on Naval Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 3310.]

*The Committee on Naval Affairs, to whom was referred the bill (H. R. 3310) to amend section fifteen hundred and seventeen of the Revised Statutes, in relation to admissions into the Naval Academy, respectfully submit the following report:*

Under existing law candidates for admission to the Naval Academy, in addition to other qualifications therein stated, are required to be between the ages of fourteen and eighteen at the time of their examination. This bill makes no change in the existing law, except to extend the time, and to require that candidates for admission shall be between the ages of fourteen and twenty-two at the time of their examination.

Your committee, after a full and careful consideration of this subject, can find no good or sufficient reason for making the proposed change in the existing law, and are of the opinion that said bill ought not to pass.



## NAVAL WHARF AT KEY WEST.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BRIGGS, from the Committee on Naval Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 1023.]

*The Committee on Naval Affairs, to whom was referred bill H. R. 1023, having had the same under consideration, respectfully submit the following report:*

The naval station at Key West is one of very great importance as a depot for coal and stores, and it affords a very convenient place for the repair of the machinery of vessels belonging to the Atlantic squadron.

The present wharf is an old wooden structure in a ruinous condition, requiring frequent repairs, and is wholly unfit for the necessities of the station. The Secretary of the Navy, in a communication to the Naval Committee in relation to the construction of a new wharf at this place, uses the following language:

The department regard this wharf as an improvement of the utmost importance and as absolutely necessary for the accommodation of the naval force employed at the West India station, and strongly recommend the passage of the bill, as the present old wharf cannot stand much longer.

The committee report said bill to the House, and unanimously recommend its passage.



W. S. SCHLEY.

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APRIL 6, 1880.—Laid on the table and ordered to be printed.

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Mr. BREWER, from the Committee on Naval Affairs, submitted the following

## REPORT:

[To accompany bill H. R. 3327.]

*The Committee on Naval Affairs, to whom was referred bill H. R. 3327, report as follows:*

The claimant in this matter begs leave to withdraw the papers in this case, and the committee recommend that he have leave to do so, and that the bill be laid upon the table.

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## SEA-PAY TO CERTAIN OFFICERS OF THE NAVY.

APRIL 6, 1880.—Laid on the table and ordered to be printed.

Mr. BREWER, from the Committee on Naval Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 3009.]

*The Committee on Naval Affairs, to whom was referred the bill (H. R. 3009) granting sea-pay to volunteer officers of the Navy mustered out of service under act of Congress approved February 15, 1879, respectfully report:*

That said committee find that an act was approved February 15, 1879, to muster out the volunteer officers of the Navy; said act also provided that such officers as were mustered out by virtue of said act should receive *one year's pay*.

There were at that time three different kinds or grades of pay for such officers—sea-pay, shore-duty pay, and leave or waiting-order pay. These grades of pay differ in amount. When these officers were retired they were allowed one year's pay as on waiting orders. This was the construction put upon the act by the Fourth Auditor, as shown by the following communication:

TREASURY DEPARTMENT,  
FOURTH AUDITOR'S OFFICE,  
February 16, 1880.

SIR: I respectfully return herewith bill H. R. 3009, informally submitted by you, and in reply to your verbal inquiry I have the honor to state that, in the settlement of claims arising under the act of February 15, 1879, to abolish the volunteer Navy of the United States, the claimants were allowed one year's pay as on leave or waiting orders, in conformity with a long-established rule of construction applied by the accounting officers to the word "pay" when used without qualification in laws affecting the compensation of officers of the Navy. They receive three different rates of pay, according to the status they may from time to time occupy by virtue of the orders that may be issued to them by the Navy Department—"sea," "other-duty," and "leave or waiting-orders" pay.

The "one-year's pay," authorized by the act of February, 1879, was not for the purpose of compensating the officers for any duty that they were to perform, but conferred upon them as a gratuity upon being mustered out of the service, and it was assumed that if Congress intended to give them a year's pay, as provided for officers of a like grade on duty at sea, it would have been so expressed in the law and in language not to be misunderstood.

I am, sir, respectfully, your obedient servant,

CHAS. BEARDSLEY, *Auditor*.

It is presumed when Congress passed the act in question it had the construction of the department in view, and expected the words *one year's pay* to be construed as they had before been by the Auditor. The committee think such construction correct; and, believing the former act a liberal one, see no reason for extending its provisions, and respectfully recommend that the bill do not pass.





**HENRY F. LOVEAIRE.**

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**APRIL 6, 1880.**—Laid on the table and ordered to be printed.

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**MR. BREWER**, from the Committee on Naval Affairs, submitted the following

**R E P O R T :**

[To accompany bill H. R. 4475.]

*The Committee on Naval Affairs, to whom was referred bill H. R. 4475, report as follows :*

Henry F. Loveaire was appointed an acting third-assistant engineer in the Navy December 31, 1861, and transferred to the regular service in the Navy September 8, 1863. On the 1st of February, 1867, he failed to pass the required examination for promotion to the next higher grade in the engineer corps, and in October, 1868, he was again examined for promotion, and failed to pass for the second time. Claimant, having been found not qualified at this second and final examination for promotion, was, in accordance with the statute, dropped from the service. On October 26, at the request of claimant, the order dropping him from the service was revoked and his resignation accepted, and from said date claimant has been in no way connected with the naval service.

The committee see no good reason for granting the relief prayed for in claimant's bill, and respectfully recommend that the bill do not pass.



## CAMP DOUGLAS MILITARY RESERVATION.

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1880.—Committed to the Committee of the Whole House and ordered to be printed.

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REBEL, from the Committee on Military Affairs, submitted the following

### REPORT :

[To accompany bill H. R. 1287.]

*Committee on Military Affairs, to whom was referred the bill (H. R. 1287) to authorize the Secretary of War to relinquish and turn over to the War Department certain parts of the Camp Douglas military reservation in the Territory of Utah, have had the same under consideration, and submit the following report :*

The bill, which, by its terms, authorizes the Secretary of War to relinquish and turn over to the Department of the Interior, for restoration to the public domain, a certain portion of the Camp Douglas military reservation, in the Territory of Utah, is for the relief of Mr. Charles Popper, a citizen of the United States, resident in said Territory of

Utah. In the last Congress a bill of similar import to that now under consideration was introduced into the Senate and referred to the Committee on Military Affairs. That committee considered it, and made a unanimous report in its favor. It was placed upon the calendar, but Congress adjourned before it was reached.

From the record filed in the case, it appears by Executive Document No. 10, House of Representatives, first session Forty-fourth Congress, that Mr. Charles Popper settled in the Territory of Utah in the year 1865, and that he purchased of certain herders of cattle, then settled upon the land now comprised within the military reservation of Camp Douglas, certain accessory rights thereupon, together with certain improvements, consisting of a log cabin and corral, for the sum of \$800. Immediately thereafter he erected a slaughter-house and corral on the said land, at a cost of \$2,000, dug a ditch of a quarter of a mile in length, laid out from a certain spring contiguous to the slaughter-house, at an additional cost of \$500. In the year 1865 he erected a cut-stone rock building thereon, at the cost of \$14,000, and expended in other improvements, such as out-houses, stables, &c., not less than \$10,000 additional, making the total outlay upon said land the sum of \$26,500. He has since that time held said premises and held peaceable possession thereof ever since. At that time (1865) the land was unsurveyed, and no land-office had been established by the government in Utah Territory. On September 1, 1865, however, and prior to any survey, the extension of the Camp Douglas military reservation was ordered to be established by the

President, and was so announced in General Order No. 66, Western Department of the Platte, December 17, 1869. It will be seen that this reservation was established in 1867, but it does not appear to have been definitely located nor surveyed until 1869. Thereupon to this survey, Mr. Popper was unapprised that the land upon which he had settled and made these large and expensive improvements in any wise embraced within a military reservation, and that in 1869 was his first information in the premises, after he had learned the same, and paid city, county, and Territorial taxes thereon for four years.

It appears from the sworn statement of General George R. B. late register of the United States land-office at Salt Lake City, Territory, that Mr. Popper took necessary steps, so soon as the land office was established, to protect his claim, and procure a title to the lands occupied by him, and made proof of his occupation to the purchase from a previous owner in 1864, and the erection of other improvements thereon at an outlay of large sums of money. His papers were all forwarded to the General Land Office at Washington, with the recommendation that Mr. Popper be allowed to purchase the same. But this purchase, as of necessity, could not be permitted on account of the subsequent extension of the said military reservation.

Upon the occupation of said reservation by the military authorities, the fact of Mr. Popper's occupation of a portion thereof, together with a statement of the improvements erected thereon by him, was brought to the attention of the Secretary of War, under the general order adopted of forcing all squatters to remove from military reservations when the same are established or extended.

The following is the correspondence, through the various channels, in reference to Mr. Popper's case, until Lieut. G. W. Sheridan, of date Chicago, December 28, 1875, upon a review of the premises, recommends *that the government do relinquish the northwestern corner of the reservation as embraces the appraised claim of Mr. Charles Popper:*

HEADQUARTERS CAMP DOUGLAS, UTAH TERRITORY,  
December 28, 1875.

SIR: In compliance with your instructions, dated Headquarters Department of Omaha, Nebr., September 8, 1874, to remove all trespassers from the reservation at Camp Douglas, I have the honor to submit the following report:

Upon investigation the following trespassers were found:

First. Mrs. Ann Elmer has a small two-story house, basement built of rock, upper story of adobe, of little value, situated near the southern line of reservation, and built before the extension. Mrs. Elmer was notified to remove; she has not complied, and it will be taken down as soon as men can be had for that purpose.

Second. Frame building near northwest corner of reservation, occupied by ———; built by mistake on the reservation; notice given, and the house removed.

Third. Old brick mills and kiln near west line of reservation, of little value, given and complied with.

Fourth. A small adobe house near west line of reservation, owned and occupied by Stephen Pope and wife—very old people—who evidently have been deceiving the purchase of their supposed little property. Upon investigation of their purchase that the lot was certified by the Salt Lake authorities to Christian E. Norholm, 24, 1867. No transfer has been made by Norholm to John Baswell, who claims conveyance to Pope, which was recorded March 24, 1869. No action taken in the premises. I would deem it cruel to dispossess these old people at once.

Fifth. Two temporary buildings (board) for ice-houses, half-way between the west line of reservation, owned by John Heil, who claims to have had reservation from Lieut. Col. H. A. Morrow; notice to vacate given; action suspended. Petition herewith, marked A, can be considered by the department committee.

would recommend that he be permitted to use his ice-houses until next fall, and then required to vacate, as he has been to considerable labor and expense.

Sixth. Extensive and valuable improvements near north line of reservation (see plat inclosed, together with papers in the case, Nos. 1, 2, 3, 4), belonging to Charles Popper, beef-contractor.

These improvements consist of a large sandstone building, suitable for the manufacture of soap and candles; three frame buildings, cattle and pig pens, and considerable fencing, as set forth in Mr. Popper's declaration, and which has been verified by a personal examination in connection with the papers submitted. I have made diligent inquiry and find these improvements were made as stated previous to the extension of the reservation, as declared by the President of the United States September 3, 1867, and that Charles Popper has an equitable claim for the favorable consideration of the proper authorities.

I have the honor to be, most respectfully, your obedient servant,

JNO. E. SMITH,

*Colonel Fourteenth Infantry, Commanding.*

To the ASSISTANT ADJUTANT-GENERAL,  
*Headquarters Department of the Platte, Omaha, Nebr.*

HEADQUARTERS DEPARTMENT OF THE PLATTE,  
*Omaha, Nebr., December 24, 1874.*

Respectfully forwarded to headquarters Military Division of the Missouri. Attention invited to indorsements on the within inclosures.

E. O. C. ORD,  
*Brigadier-General, Commanding.*

[Second indorsement.]

HEADQUARTERS MILITARY DIVISION MISSOURI,  
*Chicago, December 31, 1874.*

Respectfully forwarded to the headquarters of the Army.

In the absence of the Lieutenant-General.

R. C. DRUM,  
*Assistant Adjutant-General.*

[Third indorsement.]

HEADQUARTERS OF THE ARMY,  
*Saint Louis, January 5, 1875.*

Respectfully forwarded to the Secretary of War.

W. T. SHERMAN,  
*General.*

[Fourth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, January 19, 1875.*

Respectfully submitted to the Secretary of War, inviting attention to accompanying brief and report.

E. D. TOWNSEND,  
*Adjutant-General.*

[Fifth indorsement.]

WAR DEPARTMENT, *April 12, 1875.*

Respectfully returned to the Adjutant-General.

The views and action of General Ord in all of the within cases, as well as his recommendation regarding the appointment of a board of officers, not stationed at Camp Douglas, to examine into the merits of any claim of Charles Popper to further compensation for improvements, are approved.

The board will be ordered by the department commander.

WM. W. BELKNAP,  
*Secretary of War.*

[Received back Adjutant-General's Office April 13, 1875.]

[Sixth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, April 15, 1875.*

Respectfully returned, through headquarters of the Army, to the commanding general Department of the Platte, for appropriate action, inviting attention to the decision and orders of the Secretary of War, indorsed hereon.

## CAMP DOUGLAS MILITARY RESERVATION.

These papers to be returned to this office with report of action and proceedings of board of officers.

By order of the Secretary of War :

E. D. TOWNSEND,  
*Adjutant-General.*

[Received back Adjutant-General's Office June 10, 1875.]

[Seventh indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, June 11, 1875.*

Respectfully returned to the Secretary of War, with proceedings of a board of officers, convened by orders from headquarters Department of the Platte, dated May 7, 1875, in the case of Mr. Charles Popper.

E. D. TOWNSEND,  
*Adjutant-General.*

2903 Adjutant-General's Office accompanying.

[Eighth indorsement.]

WAR DEPARTMENT, *June 19, 1875.*

Respectfully returned to the Adjutant-General of the Army, calling attention to the fact that General Crook's order convening the board of officers does not appear to have been exactly conformable to the directions of the Secretary of War. The Secretary of War approved of the views and recommendations of General Ord. These were as follows: \* \* \* "I therefore disapprove of any commission to purchase land being given this man, because of the various privileges and favors granted him of occupying gratis a valuable and choice location, well supplied with a never-failing spring. \* \* \* I recommend that a board of officers, not stationed at Camp Douglas, be ordered to examine into the merits of any claim of Mr. Popper to further compensation for improvements, and after assessing the rent which the land could have brought the United States on Mr. Popper, at current rates, the difference, if any, between the actual present worth of Mr. Popper's original improvements, not the farm or appurtenances thereto, and what Mr. Popper would have had to pay as rent to private parties, be allowed him."

Let the papers be returned to the general commanding the Department of the Platte with directions to reconvene the board of officers for the purpose of carrying out the foregoing recommendations of General Ord. Congress alone can permit Mr. Popper to acquire a title to any part of the reservation. While this may prove, after all, the best settlement of the claim, it is not the mode heretofore approved by the Secretary of War, and for which the services of the board of officers were particularly required.

WM. W. BELKNAP,  
*Secretary of War.*

[Received back Adjutant-General's Office June 24, 1875.]

[Ninth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, June 25, 1875.*

Respectfully returned through headquarters of the Army to the commanding general Department of the Platte, who will cause the board of officers to be reconvened in accordance with the instructions of the Secretary of War, contained in preceding indorsement (8th).

These papers to be returned as heretofore directed.

By order of the Secretary of War :

THOMAS M. VINCENT,  
*Assistant Adjutant-General.*

[Tenth indorsement.]

HEADQUARTERS OF THE ARMY,  
*St. Louis, June 28, 1875.*

Respectfully transmitted, through headquarters Division of the Missouri.

By command of General Sherman :

WM. D. WHIPPLE,  
*Assistant Adjutant-General.*

[Eleventh indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,  
*Chicago, June 29, 1875.*

Respectfully returned to the commanding general Department of the Platte.

By command of Lieutenant-General Sheridan :

R. C. DRUM,  
*Assistant Adjutant-General.*

[Twelfth indorsement.]

HEADQUARTERS DEPARTMENT OF THE PLATTE,  
*Omaha, Nebr., November 13, 1875.*

Respectfully returned to Col. I. N. Palmer, Second Cavalry, president of the board of officers convened by paragraph 6, Special Order No. 55, and reconvened per paragraph 2, Special Order No. 123, current series, from these headquarters (copy inclosed).

By command of Brigadier-General Crook :

GEO. D. RUGGLES,  
*Assistant Adjutant-General.*

[Received back December 15, 1875, with proceedings indorsed, and certified to Colonel Palmer, Second Cavalry, president of the board, for completion, December 16, 1875; back, with correction made, December 23, 1875.]

[Thirteenth indorsement.]

HEADQUARTERS DEPARTMENT OF THE PLATTE,  
*Omaha, Nebr., December 23, 1875.*

Respectfully returned, through headquarters Military Division of the Missouri, to the Adjutant-General of the Army, with new proceedings in the case, which are approved.

GEORGE CROOK,  
*Brigadier-General, Commanding.*

[Fourteenth indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,  
*Chicago, December 28, 1875.*

Respectfully returned to the Adjutant-General of the Army, recommending that the government relinquish so much of the northwestern corner of the reservation as embraces the apparently just claim of Mr. Charles Popper.

This is, in my judgment, the best way to settle this question, especially as that portion of the reservation is not necessary to the wants of the public service at Camp Douglas.

P. H. SHERIDAN,  
*Lieutenant-General, Commanding.*

[Received back Adjutant-General's Office, December 31, 1875, with three inclosures, twelve indorsements.]

[Fifteenth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, January 4, 1876.*

Respectfully returned to the Secretary of War, inviting attention to thirteen and fourteenth indorsements hereon.

E. D. TOWNSEND,  
*Adjutant-General.*

The merits of Mr. Popper's claim to the lands in question were investigated by a board of officers, convened under authority of the War Department, consisting of Col. I. N. Palmer, Second Cavalry; Col. F. F. Flint, Fourth Infantry, and First Lieut. George O. Webster, adjutant Fourth Infantry, which board assembled in pursuance of the following order :

[Special Order No. 55.—Extract.]

HEADQUARTERS DEPARTMENT OF THE PLATTE,  
*Omaha, Nebr., May 7, 1875.*

\* \* \* \* \*

V. A board of officers, to consist of Col. I. N. Palmer, Second Cavalry; Col. F. F. Flint, Fourth Infantry, and First Lieut. George O. Webster, adjutant Fourth Infantry, will assemble at Camp Douglas, Utah Territory, at 10 o'clock a. m., on Thursday, May 13, 1875, or as soon thereafter as practicable, to examine into the merits of any claim of Mr. Charles Popper to further compensation for improvements on the military reservation of Camp Douglas, and to investigate generally and thoroughly, and report fully, upon the subject of the occupation of part or parts of the said reservation by the said Mr. Charles Popper or his agents.

\* \* \* \* \*

By command of Brigadier-General Crook :

GEO. D. RUGGLES,  
*Assistant Adjutant-General.*

After taking testimony and going through various deliberations, with the usual formalities and routine incident to such proceedings, the board found for the merits of Mr. Popper's claim, but suggested that the only way he could obtain proper relief would be by act of Congress, which body would either direct a redrawing of the lines of the Camp Douglas reservation, so as to exclude the land in question, or appropriate money to pay a just and reasonable price for the improvements which were on the land in question at the time it was enveloped in the military reservation, as re-established in 1867. But the board also found that the land in question, *were it not for the improvements made upon it by Mr. Popper, would be of no value to the United States or to any private party as a place to rent.* Hence, the improvements being of no use to the government, by reason of the land being of no value to the government for any purpose, it would follow that Congress could not justifiably appropriate money to pay for improvements valueless to the government. The remedy, therefore, suggested by Lieutenant-General Sheridan was accepted by the Department of War, and the Secretary submitted to the House of Representatives, of date January 20, 1876, the following communication, transmitting the papers which have in part been quoted herein by your committee:

[44th Congress, 1st session. House Ex. Doc. No. 97.]

*Letter from the Secretary of War transmitting correspondence relating to the military recreation at Camp Douglas, Utah.*

WAR DEPARTMENT, January 20, 1876.

The Secretary of War has the honor to submit to the House of Representatives the following communication:

The military reservation of Camp Douglas, Utah, as ordered by the President September 3, 1867, included certain valuable improvements made in good faith by Charles Popper, among which were a slaughter-house and a stone-built soap-factory. The improvements are in a hollow near the northwest corner of the reservation. The matter has been investigated by a board of officers, and the following recommendation of Lieutenant-General Sheridan meets the approval of the Secretary of War: "That the government relinquish so much of the northwest corner of the reservation as embraces the apparently just claim of Mr. Charles Popper. This is, in my judgment, the best way to settle this question, especially as that portion of the reservation is not necessary to the wants of the public service at Camp Douglas." The act of June 22, 1874, concerning certain reservations in Arizona, may be suggested as a precedent in point of form.

Attention is also invited to a claim by Stephen Pope for improvements included within the same reservation. In this case a board of officers has recommended the payment by the government of \$150 for any losses sustained by Pope in consequence of removal from the reservation, but the Secretary of War concurs in the opinion reported by the Acting Quartermaster-General—

"That the payment \* \* \* recommended by the board \* \* \* cannot be made without the sanction of Congress. The case appears to be similar to that of Matthew Palen and others, for property taken by the government in the extension of the Camp Mohave reservation, favorably settled by act approved February 19, 1873."

Claims of similar character in the experience of this department have been not infrequent. With a view to some examination of them when presented, General Order No. 74, Adjutant-General's Office, November 2, 1869, provided:

"Hereafter no squatter or citizen will be permitted to enter or reside upon a military reservation, unless he be in the employment of the government, or permitted by the department commander. \* \* \* Where parties are already in possession, with valuable improvements, the department commander will cause an investigation to be made, and submit each case separately for the decision and orders of the Secretary of War."

It is believed, however, that compensation for the loss of such improvements cannot, in general, be properly made without the special sanction of Congress, except in cases arising within the old Territory of Oregon, where, by section 9 of the act of February 14, 1853, being "An act to amend an act entitled 'An act to create the office of surveyor-general of the public lands of Oregon,'" &c., it is provided as follows:

"That if it shall be deemed necessary, in the judgment of the President, to includ



such reservation the improvement of any settler made previous to such reservation shall in such case be the duty of the Secretary of War to cause the value of improvements to be ascertained, and the amount so ascertained shall be paid to the settler entitled thereto out of any money in the Treasury not otherwise appropriated.

In accordance with the general policy of encouraging the settlement of the public lands, this act recognizes the justice of making compensation to settlers who have acquired title to their lands, but who have been unexpectedly deprived of the fruits of their labor by the action of the government. It is respectfully submitted for the consideration of Congress whether some legislative provision, similar to that contained in the above-recited act of Congress relating to the former Territory of Oregon, should not be made applicable to military reservations everywhere. Papers relating to the above-mentioned claims of Charles Popper and Stephen Popper are herewith transmitted.

WM. W. BELKNAP,  
*Secretary of War.*

The board of officers convened for investigation and report on Mr. Popper's claim found, among other facts, as stated in the following report from their proceedings:

John E. Smith, Fourteenth Infantry, commanding at Camp Douglas, gives it as his opinion that Mr. Popper's property is in no way necessary for military purposes. The distance from the main road leading from Camp Douglas to Salt Lake City. The slaughter-house is in no way a nuisance to the post; a considerable portion of the land is unfit for any purpose, being the side of a mountain, or broken up in ravines and gullies, and is so located that it will probably never be required for any public uses.

Although the order convening the board in this case does not direct that an opinion be expressed, it is believed that it was intended that it should do so, and it is the opinion of the board that Mr. Popper should be permitted to acquire a title to any portion of the land designated in the accompanying map as Popper's property, which was included in the first reservation of one mile square, and was brought into the reservation, as declared by the order of the President, September 3, 1867.

As it is considered that it would be for the best interests of the service for the government to have possession of the lower half of the southernmost portion of Mr. Popper's land, it is recommended that if any permission is accorded to Mr. Popper to use, that such southern half be retained, giving him, Popper, an equal amount of land immediately to the westward of the northern half of such southern portion. The board inclose a map showing the proposed division of the "quarter-section" referred to. (Map is dated Salt Lake City, Utah Territory, May 15, 1875.)

Mr. Popper has declared himself satisfied with such an arrangement as the one just referred to.

From this, it would appear that it would be for the best interests of the government to have possession of the lower half of the southernmost portion of Mr. Popper's land, allowing Mr. Popper an equal amount of land immediately to the westward of the northern half of such southern portion, a proposition to which Mr. Popper appears to have acceded. The map referred to and forwarded by the board, showing the proposed division of the quarter-section, is on file in the office of the Clerk of the House of Representatives, and the description of the land as stated in the bill, containing 151  $\frac{81}{100}$  acres, conforms to and agrees with the map transmitted by the said board of officers to the Secretary of War. Therefore, so far as this matter is concerned, the land proposed by the bill is turned over by the Secretary of War to the Secretary of the Interior, for the purpose of allowing Mr. Popper to enter the same at government rates, in view of the equities of his claim, is the land recommended by the said board of officers, in part by substitution as afore-said, and embraces the improvements erected by Mr. Popper, and which are found by the said board, not needed for military purposes.

It appears affirmatively by the record that Mr. Popper has never exercised the right of pre-emption conferred by existing laws, and therefore still retains the privilege. Your committee find, the premises considered, that Mr. Popper's settlement on said land was *bona fide*, and

that at the time of his said settlement he could have been in no wise advised of the probability of its being included within any prospective extension of the military reservation. He had made large outlay in the way of erecting improvements prior to any action taken by the authorities to set the land aside for military purposes, and had been assessed for and paid taxes upon the same also prior to the establishment of the military reservation. He has always occupied the premises and retained peaceable possession of the same. The land being not needed for military purposes and the improvements of no value to the government, it would seem proper to afford him the relief he seeks, especially since the whole matter has been formally inquired into and reported upon by the military authorities, through a board consisting of officers of the highest character, whose action, together with the conclusions of the Lieutenant-General of the Army, and the recommendations of the Secretary of War, ought to be conclusive upon Congress.

The committee therefore recommend the passage of the bill.



JOHN R. BROWN.

1880.—Committed to the Committee of the Whole House and ordered to be printed.

ONE, from the Committee on the Post-Office and Post-Roads, submitted the following

## REPORT:

[To accompany bill H. R. 4731.]

Committee on the Post-Office and Post-Roads, to whom was referred bill H. R. 4731, ask leave to make the following report:

On the nights of December 21, 1878, and January 16, 1879, the United States post-office at Beaver City, Nebr., was broken open by burglars. The office robbed of its contents, consisting of letters, postal cards, postage-stamps, stamped envelopes, &c. The robbery seems to have been committed by two men, who have since been arrested and are now in the custody of the United States officers awaiting their trial. A portion of the stolen property was found in their possession, and one of them made a full confession of the crime. The postmaster, John R. Brown, was not reimbursed for the postage-stamps so stolen, and fixes the amount at \$67.50; and as the evidence shows that the postmaster was not at fault in the case, but was in the exercise of due care and diligence in administering the office, your committee are of opinion that he should be reimbursed, and therefore recommend the passage of the bill. They also ordered a copy of a letter from a special agent of the Post-Office Department to the chief special agent on the subject. The claim of the postmaster is also supported by his own affidavit and the affidavit of the United States marshal who arrested the robbers. The statement of the Post-Office Department showing the probable amount of stamps stolen and at the office at the time of the burglary corroborates the affidavit of the claimant.

OFFICE OF SPECIAL AGENT, POST-OFFICE DEPARTMENT,  
Omaha, Nebr., February 23, 1880.

In the matter of the robberies of the post-office at Beaver City, Nebr., on the nights of December 21, 1878, and January 16, 1879 (cases 18889 B and 19770 B), that I have finally worked out a full discovery and the arrest of the two thieves, whose names are George C. Wilson and George C. Jones, both names being *aliases*, true names being John and a large portion of the stolen stamps recovered. The evidence seems conclusive, although I have not as yet the *written* confession of either of the thieves, but am promised it, and will go over to Lincoln, Nebr., where they are in custody and will obtain it, as I am promised a full confession. So now I have that case off my mind."

Respectfully, your obedient servant,

JOHN B. FURAY,  
*Special Agent.*

D. B. PARKER,  
*Chief Special Agent Post-Office Department, Washington, D. C.*

—Arrest made February 8, 1880, at Furnas County, Nebraska, near Beaver City.  
J. B. FURAY.



## CARRYING THE MAILS.

APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. STONE, from the Committee on the Post-Office and Post Roads, submitted the following

### REPORT:

[To accompany bill H. R. 5429.]

*The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 5429) to authorize the Postmaster-General to make a contract with the Saint Louis Bridge Company and Tunnel Railroad to carry the mails between East Saint Louis, Ill., and the Union Depot at Saint Louis, Mo., respectfully report:*

That the necessity for the legislation proposed in this bill is apparent from the following letter from the Postmaster-General, viz:

POST-OFFICE DEPARTMENT,  
Washington, D. C., March 24, 1880.

SIR: In 1876 the Illinois and Saint Louis Bridge Company and the Tunnel Railroad Company of Saint Louis, Mo., completed the bridge over the Mississippi River connecting Saint Louis, Mo., with East Saint Louis, Ill., and, with the tunnel completed at the same time, formed a line from the Union Depot in Saint Louis, Mo., through the tunnel and across the bridge to East Saint Louis, Ill., a distance of about three miles.

All the railroads approaching Saint Louis through the State of Illinois terminate at East Saint Louis, and the companies transfer their trains to the Bridge and Tunnel Company, by whose motive power they are drawn over the bridge and through the tunnel to the Union Depot, at which point a room is provided and laborers furnished to handle and transfer the mails.

Upon the completion of this connection the department made a contract with the proprietors of the line to carry the mails to and from all roads ending at East Saint Louis, care for them at the Union Depot, and carry all mails between the post-office and the various railroads terminating at Saint Louis.

This service was regarded as mail-messenger and terminal service by the then law officer of the department, and a contract was made for it at a compensation of \$27,500 per annum. The transfer of mails between the depots and the post-office was afterwards assumed by the department, and \$10,000 per annum deducted from the contract price, leaving the compensation \$17,500 per annum.

The present arrangement for this service will expire on the 30th June next, and the present law officer has advised that, under existing law this service must be treated as railroad service, and so paid for.

Treating this service under the general laws governing the compensation to railroads for carrying mails, would make the compensation not to exceed \$3,500 per annum.

The service performed per annum is as follows, viz: Drawing between Union Depot and East Saint Louis, 4,068 postal cars each way; 3,443 route-agents' apartments each way; 8,396 cars containing express mails each way; furnishing room and labor for care and handling of mails at Union Depot; this item costing the company, according to estimate of the department's agent at Saint Louis, \$2,000 per annum.

It will be seen from this schedule of service rendered, that \$3,500 per annum, the sum allowable for it as an ordinary railroad route, would not be sufficient compensation.

The matter is presented for the consideration of your committee, for the reason that

the service is of great importance to the public, and any interruption to it would inflict serious injury to the postal service.

I would recommend that authority be given to pay for this service as other than a railroad route out of any appropriation available for the purpose.

Very respectfully, &c.,

D. M. KEY,  
*Postmaster-General.*

Hon. H. D. MONEY,  
*Chairman Committee on Post-Office and Post-Roads, House of Representatives.*

From the best information which your committee have been able to obtain from official and other sources, they are of opinion that the sum now paid for these services is a fair and reasonable compensation.

In the opinion of your committee legislation is necessary on this subject, and they therefore report this bill and recommend its passage.

○

## CONTRACTS FOR CARRYING THE MAILS.

APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. STONE, from the Committee on the Post-Office and Post-Roads, submitted the following

### REPORT:

[To accompany bill H. R. 5430.]

*The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 5430) to amend section 3949 of the Revised Statutes of the United States, relative to the postal service, ask leave to make the following report:*

The amendment of said section 3949 Revised Statutes, proposed in the accompanying bill, has been recommended by the Post-Office Department.

Under existing law, contracts for carrying the mail may be approved by any postmaster.

The practice under this law has led to abuses. Contractors, in many instances, have been able to obtain, improperly, the approval of postmasters at obscure offices, who knew nothing of the sufficiency of the sureties, and the government has thus been imposed upon and the service defrauded.

It is proposed by this bill that the sureties shall be "approved by the postmaster at the place of residence of such bidder or by a postmaster of the first or second class." This gives the bidder the option to go to the postmaster at his place of residence, or to any postmaster of the first or second class. To require him to go before the latter in all cases, would, in the opinion of your committee, have a tendency to narrow competition, for in some of the new or sparsely settled portions of the country it would necessitate a journey of a hundred miles or more on the part of the bidder and his sureties in order to reach a postmaster of the first or second class. Such a requirement would discourage bidding and that competition which is desirable in all cases.

Under existing law there seems to be no penalty or punishment for the approving a contract for carrying the mail without the exercise of due diligence or for knowingly making a false or fraudulent certificate of approval of insufficient sureties upon such a contract. This defect this bill, if enacted, will remedy.

In the opinion of your committee the legislation here proposed is wise and necessary to protect the government in making contracts for carrying the mail. We therefore recommend the passage of the bill, with the following amendment: In line 17, after the word section, strike out the words "two hundred and forty-five," and insert *thirty-nine hundred and forty-seven*, in order to cure a clerical error made in draughting the bill.





MAIL LETTINGS.

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APRIL 6, 1880.—Laid on the table and ordered to be printed.

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**Mr. STONE**, from the Committee on the Post-Office and Post-Roads, submitted the following

R E P O R T :

[To accompany bill H. R. 2245.]

*The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 2245) to regulate the letting of mail contracts, would report as follows :*

Your committee believe that the widest and most extended competition in the bidding for, and letting of, mail contracts should be the policy of the government. This bill seeks to confine and restrict this competition to "residents of one of the counties through which, or into which, or out of which" the respective mail route runs. It further requires the party to whom a contract is awarded to carry the mail and not to sublet the contract.

The enactment of such a law would, in the opinion of your committee, largely increase the expense of the service. They therefore report adversely, and ask to be discharged from further consideration of the bill.



B. N. EWING.

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APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. EVINS, from the Committee on the Post-Office and Post-Roads, submitted the following

## REPORT:

[To accompany bill H. R. 3293.]

*The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 3293) for the relief of B. N. Ewing, having considered the same, report as follows:*

The facts of the case are fully set forth in the affidavits of Mr. Ewing and Mr. S. J. Nicolay, assistant postmaster, which are as follows:

STATE OF ILL.,  
Tazewell Co., ss:

I, B. N. Ewing, being first duly sworn, depose and say I am postmaster at post-office at Minier, Tazewell Co., Illinois; that on the evening of April 1st, 1879, at close of business, my record exhibits that there was a balance due U. S. on money-order \$226.66, two hundred sixty-six and  $\frac{2}{3}$  dollars, less a remittance of fifty dollars mailed March 31st, 1879, for which certificate had not been received, and being cash in following denominations, viz: Nine U. S. Treas. notes of twenty dollars each, and one twenty-dollar national currency, and one U. S. Treas. ten-dollar note, and one U. S. Treas. five dollar-note, and one and  $\frac{4}{5}$  dollars in silver, in total two hundred sixteen and  $\frac{4}{5}$  dollars, all money-order funds, which cash was in a drawer by itself in steel vault, under lock by key in safe, under combination lock.

I further depose and say there was in said safe in said steel vault, in another drawer, in cash of postal funds, one hundred and eight dollars, including private funds of the firm of Ewing & Nicolay, of which I am a member (one hundred two and  $\frac{1}{10}$ , exact amount of postal funds, as shown by quarterly statement of April 1st, 1879).

I further depose and say that on the night of April 1st, 1879, between the hours of 9 o'clock p. m. of said day and 6.30 o'clock a. m. of April 2d, 1879, a person or persons to me unknown entered my place of business through a window by cutting out a light and prying up the lower sash; and through a hole in front plate of aforesaid safe door, in which safe was kept aforesaid funds belonging to the U. S. Government and aforesaid firm, of which I am a member, said parties placed powder between plates of safe door, by means of which they blew open said safe, and took therefrom aforesaid funds, and which funds I have not as yet been able to obtain, neither have I any knowledge at present of their whereabouts, nor of parties taking same.

B. N. EWING,  
Postmaster.

Subscribed & sworn to before me this 20th day of Jan., A. D. 1880.

[SEAL.]

JAMES M. EDMISTON,  
Notary Public.

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STATE OF ILL.,  
Tazewell Co., ss:

I, S. J. Nicolay, a member of the firm of Ewing & Nicolay, and the asst. postmaster, depose and say, of my own knowledge, that all the above particulars, excepting

such as relate to money-order  $\frac{3}{4}$ c, are true, and that I, at close of business, on eve of April 1st, 1879, locked said safe, and that said funds were therein.

S. J. NICOLAY, 'st. P. M.

Subscribed & sworn to before me this 20th day of Jan., A. D. 1880.

[SEAL.]

JAMES M. EDMISTON.

Notary Public.

The reports of the special agent of the Post-Office Department recommend the relief prayed for, and are made part of this report.

These statements are further verified by a very numerously signed petition of the citizens of Minier for the relief of the postmaster.

We think upon this state of facts the postmaster at Minier is entitled to relief, and recommend the passage of the bill.

POST-OFFICE DEPARTMENT,  
OFFICE SPECIAL AGENT,  
Bloomington, Ill., January 27, 1880.

SIR: Referring to my several reports in the case of safe-robbery of post-office, Minier, Ill., and to which above-numbered depredation cases more especially refer, and to which my *special* reports of June 21, 1879, and September 17, 1879, relate, I have the honor to state, upon trial of the indictments by United States court, Springfield, Ill., 23d and 24th instants, found against William Stoner and William Poucher for the offense, the said arrested persons were acquitted by the jury.

In conclusion, I have to refer to my report of April 15, 1879, in the case, and herewith inclose the *proof* of the request of route-agents who receive the registered packages of money-order funds of B. N. Ewing, postmaster, Minier, Ill., to the fact he had been forwarding his surplus funds in accordance with their special request, and by the train north instead of south, and by which means a larger surplus of funds was in the safe night of robbery than otherwise might have been, and which request the postmaster construed as being proper and for the best interest of the service in its compliance. I would in this connection suggest, I am informed the said postmaster has been endeavoring, through aid of Congress, to get "bill of relief" for his loss of \$216.65 money-order funds and the amount of \$102.76 postal funds, stolen by the safe-robbery of night of April 1, 1879, and I understand there is *now* a bill pending in Post-Office Committee, House of Representatives, in the case. Such being the fact, in view of my examination of the burglary referred to, and by which it appeared the loss sustained occurred through no complicity of the postmaster, and as he had used the ordinary precaution to protect the funds by having *locked* same in his safe, it is my opinion such bill of relief ought to be granted to the officer in question.

Respectfully submitted.

Very respectfully, your obedient servant,

J. S. BEARD,  
Special Agent Post-Office Department.

Hon. C. F. MACDONALD,  
Superintendent Money-Order System.

POST-OFFICE DEPARTMENT,  
OFFICE SPECIAL AGENT,  
Bloomington, Ill., September 17, 1879.

SIR: Referring to my reports of June 21 and June 26, 1879, case of Minier, Ill., post-office safe robbery, I have the honor to further report I am this date informed of the arrest of one William Poucher (a resident of Minier, Ill.), for complicity in said robbery. The arrest, it is proper to state, I am informed was made 15th instant by F. Rowell, esq. (special detective), after his consultation with Assistant United States Attorney Roe, Springfield, Ill., and the prisoner has been committed to jail in default of \$1,000 bail.

Respectfully submitted.

Very respectfully, your obedient servant,

J. S. BEARD,  
Special Agent Post-Office Department.

D. B. PARKER, Esq.,  
Chief Special Agent, Post-Office Department.

BLOOMINGTON, ILL., June 27, 1879.

DEAR SIR: Your letter of a recent date is at hand. In reply, we, clerks on Bloomington and Mexico railway post-office, would say that we requested the postmaster at Minier, Ill., to send all Saint Louis registered matter north instead of south, as it reached its destination the same evening, and at the same time offered a much safer transit.

Very respectfully,

D. C. CARMICHAEL.  
HENRY STICE.  
M. R. STANSBURY.  
G. R. GLENN.

J. S. BEARD, Esq.,  
*Special Agent, Post-Office Department.*

POST-OFFICE DEPARTMENT,  
OFFICE SPECIAL AGENT,  
Bloomington, Ill., June 21, 1879.

SIR: Referring to my report 4th instant, and to cases 6452, 22889 B, and 25585 B, all relating to the post-office safe-robbery, Minier, Ill., I have further to report. Regarding the case as one of great importance, I deemed it proper to employ a special detective to assist in the discovery of the thieves, and, as a partial result of his labors, I have the information of the finding of some of the papers stolen in robbery of June 2, 1879, and the subsequent arrest of one W. Stoner, of Minier, Ill., therefor, who, I am informed, has been held in bond of \$1,000 for action of United States grand jury, Springfield, Ill., and has been committed to jail in default.

Respectfully submitted.

Very respectfully, your obedient servant,

J. S. BEARD,  
*Special Agent Post-Office Department.*

D. R. PARKER, Esq.,  
*Chief Special Agent.*

POST OFFICE DEPARTMENT,  
OFFICE SPECIAL AGENT,  
Bloomington, Ill., April 15, 1879.

SIR: I have the honor to acknowledge the receipt of your instruction of date 5th instant, and your letter of 10th instant, both referring to the case of safe-burglary at post-office, Minier (Tazewell County, Ill.), and in reply to your inquiry *special* of 10th instant in the case, I beg to state, the records (M. O. B.) of the office in question exhibited there was due the United States at the close of business April 1 the sum of \$216.65, as was noted in my report of 4th instant, and this amount appeared to be made up as per inclosed statement of the money-order account. The postmaster, it appeared, remitted, March 31, 1879, the amount of \$50, and this amount was within \$2.40 of the discretionary reserve and amount retained to pay orders, permitted by section 872 of the regulations of 1873. The balance due April 1, in fact, therefore, was \$52.40, and to this the proceeds of April 1, as per statement of account inclosed, when added, made the balance \$216.65, which amount the postmaster makes affidavit was in his safe on the night of the robbery. There is, it is proper to state, a *mail train* which passes Minier, Ill., bound southwest (i. e. to Mexico, Mo.), at the hour, when on time, of 6.21 p. m., and which train, by its route-agent, could have taken a registered package with the proceeds of the M. O. B. up to the hour named (or at least to the hour of 5½ or 6 p. m. of April 1, 1879), and destined for postmaster at Saint Louis, Mo. The explanation of the postmaster of Minier, Ill., for failing to send registered packages for Saint Louis, Mo., by said train, and instead of such route forwarding same by route-agent bound north—next morning—was, as I remember, stated at date of my personal visit and investigation of 3d instant, the same as is given in the inclosed reply to my *special* inquiry by letter to the postmaster of 14th instant, viz, in consequence of the departure of mail before the postmaster closed up his money-order records for the day, and as well because of the objection of route-agent bound south, Chicago and Alton Railroad, to sending registered packages for Saint Louis, Mo., said route (he could have dispatched a registered package for Saint Louis, Mo., also by route east, via, Illinois Midland train, 2.23 p. m., with proceeds of M. O. B., up to the hour of 1½ p. m., April 1, but this was not done), and instead by sending the registered packages for Saint Louis, Mo., and via Bloomington, Ill., on the morning train north, it is proper to note, a chain of *personal receipts* is had (after the route-agent passing Minier, Ill., receives the packages) all the way to post-office Saint Louis, Mo.

and this may be the cause of objection and request of route-agent in the case (upon this point I will make further inquiry).

In conclusion, I have to report I have conferred personally with Special Agent Stuart in the case, as was suggested in your letter of the 5th instant; and as the postmaster at Minier, Ill., reported the case to Chief Special Agent Parker, in compliance with my suggestion, would it not be well a depredation case be made up and sent to me, with papers for final report?

Respectfully submitted.

Very respectfully, your obedient servant,

J. S. BEARD.

*Special Agent Post-Office Department*

Hon. C. F. MACDONALD,

*Superintendent Money-Order System.*

POST OFFICE DEPARTMENT,

OFFICIAL SPECIAL AGENT,

*Bloomington, Ill., April 4, 1873.*

SIR: I have the honor to report that having, 2d instant, received report by telegraph from B. N. Ewing, postmaster at Minier (Tazewell County, Ill.), that the post-office at Minier, Ill., was robbed on night of 1st instant of about two hundred dollars. I visited said office, 3d instant, and investigated the case, by which visit I was informed of the robbery of a safe in which it was claimed the postmaster referred to had deposited his money-order funds of amount \$216.65, and his postal funds of amount \$102.76, or in total government funds of amount three hundred and nineteen dollars and forty-one cents (\$319.41). Affidavits of the postmaster and his assistant, S. J. Nicholay, as to this loss have been handed to me, and a reward of amount \$100 is offered by the postmaster for detection of the guilty party or parties; and though inquiry made by me lead me to the belief the burglary is that of unknown persons, and it is represented that both the postmaster and his assistant are persons of credibility and integrity, yet I have, in view of the regulations and instructions of the department, requested the postmaster to at once make *good the loss*; and in the mean time will endeavor to assist him in ferreting out and detecting the thief or thieves. It is proper to state I found by my visit the safe (in which the government funds referred to, it is stated, were placed) shattered, and it would appear as if by explosion of gunpowder and the act of a professional burglar or burglars. No loss of letters or of other government property is reported.

Respectfully submitted.

Very respectfully, your obedient servant,

J. S. BEARD,

*Special Agent Post-Office Department.*

Hon. C. F. MACDONALD,

*Superintendent Money-Order System.*

## AARON MILEY.

APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EVANS, from the Committee on the Post-Office and Post-Roads, submitted the following

## REPORT:

[To accompany bill H. R. 1652.]

*The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 1652) for relief of Aaron Miley, have considered the same, and report as follows:*

It appears by the affidavit of Aaron Miley, the postmaster seeking relief, that on the night of the 29th of May, 1877, the post-office at Sullivan, Ill., was broken into, and the following property and money of the United States stolen therefrom, to wit:

2,900 3-cent postage stamps.....	\$87 00
Money-order funds on hand.....	3 80
Mutilated currency, about.....	9 00
Silver coin, 10-cent pieces.....	5 00
One legal-tender note, United States.....	1 00
Two and three cent coins, United States, about.....	4 00
Paper scrip, 10 and 25 cents, about.....	1 50
Nickels (coin).....	3 00

Making a total of ..... 114 30

The affidavit is sustained as far as possible by the statements in a petition accompanying it, and signed by a number of citizens of the town. The Post-Office Department seems to have been promptly notified of the robbery, and a special agent of that department sent to investigate the facts, who reported as follows:

The result of my investigation shows that said post-office was entered and robbed of government property as set forth in the annexed affidavit, &c.; that the postmaster has, without success, used all means in his power to find out and punish the guilty parties; that he used all due caution in the care of the office and government funds contained therein, and it is my firm belief that the robbery occurred through no fault of the postmaster.

The committee are of the opinion that the postmaster is entitled to relief, and recommend that the bill do pass.

CHICAGO, ILL., July 29, 1877.

SIR: I have the honor to report that, agreeably to your instructions, I visited the Sullivan post-office, in the county of Moultrie and State of Illinois, on the 27th instant, for the purpose of investigating ordinary case 1785, referred to me by you.

The result of my investigation shows that said post-office was entered and robbed of government property, as set forth in the annexed affidavit, marked A; that the

postmaster has (without success) used all means in his power to find out a the guilty parties; that he used all due caution in the care of the office and g funds contained therein, and it is my firm belief that the robbery occurred no fault or neglect on his part.

The annexed memorial, marked B,\* expresses the general feeling of the Sullivan toward Postmaster Miley.

I was myself unable to obtain any clue to the robbers.

Very respectfully, your obedient servant,

A. B. SPURLIN

*Special Agent Post-Office Dep*

Capt. JAMES E. STUART,

*Special Agent Post-Office Department, and*

*Superintendent Northwestern Division, Chicago, Ill.*

A.

STATE OF ILLINOIS, *Moultrie County, ss:*

Aaron Miley, being first duly sworn by me, on his oath deposes and says: to wit: I am at the present time, and have constantly for seven years last el the postmaster at Sullivan, Illinois; that on the night of May 29, 1877, said in Sullivan was burglarized by some person or persons unknown to me, forcible entry of said office in the night-time and stole therefrom the following and money, the property of the United States, then lawfully in my custody

2,900 3-cent postage-stamps, worth .....	
Money-order funds on hand, cash .....	
Mutilated currency, about .....	
Silver coin, 10-cent pieces .....	
One legal-tender United States .....	
Two and three cent coins, United States, about .....	
Paper scrip, 10 and 25 cents, about .....	
Nickels (coin) .....	

Total .....

I further state that said post-office was well secured by locks and bolts, a is when not actually open for business, and that the loss sustained, as abo was in no way or manner the result of any negligence or carelessness or con affiant, or any employé of said office; and, further, affiant states that he ha diligence and watchfulness to ascertain who the guilty parties are, but has n able to fix the act upon any one.

AARON

Subscribed and sworn to before me this 27th day of July, A. D. 1877.

A. N. SMYS  
Notary

\* Not furnished the printer.



## POSTAL CARDS WITH FLEXIBLE FLAPS.

APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. JAMES W. SINGLETON, from the Committee on the Post-Office and Post-Roads, submitted the following

### REPORT:

[To accompany bill H. R. 4355.]

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 4355) in relation to postal cards with flexible flaps to conceal the message, having had the same under consideration, report it back and recommend its passage, with the following reasons therefor:

Postal cards with flexible flaps to conceal the message are intended as an intermediate means of correspondence between the letter-sheet and envelope and the open card, and will, we think, add to the revenue of the Post-Office Department by giving it *two cents for a private card instead of one cent for the open card.*

An infinite number of persons will not use the open card at all, preferring all their communications upon business or pleasure to be private. These persons would for short messages, party communications, &c., use this flap-card. This would specially be the case with those in transit without pens, ink, paper, and envelopes. Thus thousands of messages would be written and sent, giving the government a revenue it would not otherwise have.

The area of the writing surface of the flap-card is too small for more than a mere message or direction—only room for a few lines—and, therefore, cannot affect correspondence which would cover half a sheet of commercial note paper.

For all local correspondence, the flap-card will pay the same postage as the regular envelope and sheet of paper, and be of very much less weight.



## LANDS TO SOLDIERS AND SAILORS.

APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. BERRY, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 2761.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 2761) to amend sections 2304, 2305, 2306, 2307, 2308, and 2309 of the Revised Statutes of the United States, respectfully report, and recommend that said bill do pass.

In support of said recommendation, the committee beg leave to submit that by section 2304 of Revised Statutes of the United States, which this bill proposes to amend, the right of homestead is granted to every private soldier and officer who has served in the "Army of the United States during the recent rebellion for ninety days," &c. Under the construction placed upon said section of the Revised Statutes by the Secretary of the Interior, the rights and privileges of said statute were refused to persons who served in the militia of different States in the Union, notwithstanding the fact that said militia was organized, equipped, armed, paid, and commanded by United States officers, and were brought into the service of the United States by orders from the War Department of the United States. But being State militia, it was held by the authorities that they could not be classed as private soldiers or officers who had "served in the Army of the United States," and, therefore, were not entitled to the rights and privileges granted by the statute aforesaid. The present bill simply and only amends the law so as to extend the rights and privileges of the statute to the militia of the various States that served in the military service of the United States for a period of not less than ninety days. This amendment extends the benefit of the statute to many deserving men in different States of the Union, who did long, faithful, and efficient service in the cause of the Union during the late war, and is, in the view of your committee, but an act of justice to such men.

A statement in detail of this service of militia in the State of Missouri, and the merit of the amendments made by this bill, are more fully and elaborately set forth by letter from the Acting Commissioner of the General Land Office, a copy of which is filed with this committee.



## REPAYMENT OF CERTAIN LAND ENTRY FEES.

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APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. BERRY, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 3171.]

*The Committee on the Public Lands, to whom was referred bill H. R. 3171, have considered the same, and report as follows :*

The object of the bill is to refund to innocent purchasers of public lands all moneys they have paid the government as fees and commissions and excess purchases where, from any cause, the government fails to make title. The bill as amended also provides that in cases where parties have been required to pay double minimum price for lands supposed to be within railroad reservations, and it afterwards proved not to be within said reservations and was not double minimum, upon due proof being made the Secretary of the Interior shall refund the extra one dollar and twenty-five cents.

Your committee think the bill properly guarded and its object manifestly just. The government should certainly refund the money to the parties to whom it justly belongs, and has no right to retain money for which it gave nothing. Your committee therefore recommend the passage of this bill with the amendments proposed.



## FEEES IN DONATION CASES.

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APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. BERRY, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 3921.]

*The Committee on the Public Lands, to whom was referred bill H. R. 3921, have had the same under consideration, and report as follows :*

That under the act of September 27, 1850 (Stats. at L., vol. 9, page 496), lands were donated to certain settlers therein described in the State of Oregon; and by act of May 30, 1862 (Stats. at L., vol. 12, page 409), it was provided that all persons taking lands under the donation act above recited were required to pay certain fees for each final certificate, to wit: For 160 acres, \$5; for 320 acres, \$10; and for each 640 acres, \$15. It was provided that these fees should be paid to the register alone. By section 2238, Revised Statutes, registers and receivers, in addition to their salaries, shall each be allowed the following fees and commissions, namely, a fee in donation cases of \$5 for each final certificate for 160 acres of land; \$10 for 320 acres, and \$15 for 640 acres.

By the operations of the Revised Statutes, settlers on these donation lands are now required to pay for final certificate in the order as above, \$10, \$20, and \$30, double the fees as originally charged.

The committee think these fees excessive and not intended, and therefore recommend the passage of this bill, which restores the fees to the original amount.





## CLAIM OF THE STATE OF ARKANSAS AGAINST THE UNITED STATES.

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APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. DUNN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 3054.]

*The Committee on the Public Lands, to whom was referred bill H. R. 3054, having had the same under consideration, submit the following report:*

Section 1 of the act approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," provides as follows:

SEC. 1. That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act shall be, and the same are hereby, granted to said State.

The first section of this act, after declaring the inducements to its passage, says that the whole of these swamp and overflowed lands, made thereby unfit for cultivation, and unsold, are hereby granted to the States.

The third section of said act further provided "that all legal subdivisions, the greater part of which is wet and unfit for cultivation, shall be included as swamp lands."

This was a present grant by act of Congress of certain lands to the States within which they lie, and Congress, by the third section, gave a criterion by which to determine what was granted, to wit, such legal subdivisions of the public lands, the greater part of which were so far swamp or overflowed as to be too wet for cultivation. These lands were not only granted absolutely, but they have remained so granted ever since; and no act of Congress has ever attempted to take back this grant of the swamp lands, or to forfeit it, or to give it to any other grantee, or in any manner modified the description by which they were given to the States.

All that was necessary to the completion of the grant to the States was the identification and selection of the specific parcels coming within the description, and it was made the duty of the Interior Department to do this.

It is a well-settled doctrine recognized by all courts that "where land is granted by legislative enactment, and the grantee is authorized to demand a patent for the land, his title is as much vested as if he had

the patent, which is but evidence of his title." The grant is the law and the deed,—a patent both.

It has been repeatedly held by the courts that all the lands in the States to which the act of September 28, 1850, above quoted, applied, which were really and in fact swamp or overflowed, and thereby rendered unfit for cultivation, passed to and vested in the States immediately on the 28th of September, 1850.

The case, it is said by the courts, is the same as if the grant had been of all the prairie land, or all the wood land, or all the alluvial land in the State; the difficulty of ascertainment of its character not affecting the question. The words of the grant are direct and positive. It is a grant *in presenti*. See *Pool v. Fletcher*, 20 Ark.; *Hempstead v. Underhill*, *ib.*; *Branch v. Mitchell*, 24 Ark., p. 437; letter of Hon. Jere. Black, Attorney-General, to Hon. Jacob Thompson, Secretary of the Interior, November 10, 1858; letter of Hon. A. A. H. Stuart, Secretary of the Interior, to the Commissioner of the General Land Office, on the 23d of December, 1851 (*Lester's Land Laws*, p. 549); *Railroad Co. v. Smith*, 9 Wall., p. 99; *American Emigrant Co. v. The County of Wight*, 97 U. S. (7 Otto); *Gaston v. Hoel*, Oregon Acts and Decisions, 1874, p. 535; 50 Miss. Reports, p. 261; 3 Wisconsin Reports, pp. 416-446; 3 Otto (S. C. U. S.), p. 169; *Martin v. Marks*, 97 U. S. (7 Otto), p. 345.

Section 2 of the act above referred to is as follows:

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as it may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and at the request of said governor cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however*, That the proceeds of said lands, whether from sale or by direct appropriations in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by the means of the levees and drains aforesaid. (Stat. at Large, vol. 9, p. 519.)

It is claimed by Mr. Smithee, the agent of the State of Arkansas, and the committee have no reason to doubt it, that—

Under the rules laid down by the department, selecting agents were appointed, and they, through the surveyor-general, reported to the General Land Office 8,652,432.93 acres of land selected as swamp and overflowed. Of this amount 7,627,812.14 acres have been approved to the State, and 7,121,953 acres patented to the same. There still remains unapproved to the State 1,024,620.79 acres. Of the amount approved there still remains unpatented 505,858.66 acres.

The land which remains unapproved to the State is in the following condition:

Number of acres sold by the United States since the swamp-land grant and prior to March 3, 1857.....	184,200
Number of acres confirmed to the State by act of March 3, 1857, afterwards sold by United States.....	105,000
Number of acres selected as swamp, but afterwards certified to railroads under subsequent grants.....	252,112
Number of acres selected as swamp, but sold prior to swamp grant, and to which the State can claim no title.....	308,460
Double conflicts—that is, sold by the United States to individuals, afterwards certified to railroads, and claimed by the State under the swamp grant.....	2,518
	<hr/> 857,280
Deduct lands selected as swamp and sold prior to the grant.....	308,460
Leaves.....	<hr/> 549,820

acres still due the State of Arkansas under the selections made. The remainder due the State there is no conflict about, and the department is occasionally working that up. But there are 549,836 acres of land which the department refuses to certify under the swamp-land grant, because it has been sold to individuals or certified to railroads under subsequent grants made by the government.

remedy and settle these conflicts the act of March 2, 1855, was passed, and is as follows:

*Enacted, &c.*, That the President of the United States cause patents to be issued as far as practicable to the purchaser or purchasers, locator or locators, who have entries of the public lands, claimed as swamp lands, either with cash, or with warrants, or with scrip, prior to the issue of patents to the State or States, as directed by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the Secretary of the Interior, or other officer of the Government of the United States, to the contrary notwithstanding: *Provided*, That in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of said lands to an individual or individuals prior to the entry, sale, or location of the same under the pre-emption or other laws of the United States, no patents shall be issued by the Government for such tract or tracts of lands until such State, through its constituted authorities, shall release its claim thereto in such form as shall be prescribed by the Secretary of the Interior: *And provided further*, That if such State shall not, within thirty days from the passage of this act, through its constituted authorities, return to the General Land Office of the United States a list of all the lands sold as aforesaid, together with the dates of such sale and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

2. *And be it further enacted*, That upon due proof by the authorized agent of the State or States before the Commissioner of the General Land Office, that any of the lands were swamp lands within the true intent and meaning of the act aforesaid, the money shall be paid over to the States or States; and where the lands have been located by warrant or scrip the said State or States shall be authorized to locate an amount of like amount upon any of the public lands, subject to entry at one dollar a quarter per acre or less, and patent shall issue therefor upon the terms and conditions enumerated in the act aforesaid: *Provided, however*, That the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior.

This act was construed by the Secretary of the Interior to apply only to swamp lands as had been confirmed to the State and afterwards sold by the United States, and excluded all lands really swampy in character, not granted to the State by the act of September 28, 1850, but not surveyed, and confirmed before sale by the United States. It should here be borne in mind that the swamp land act was a grant *in presenti*, and not, however, "upon due proof," the character of the land was shown to be swampy and unfit for cultivation," the patent should issue to the State; but that it was made the duty of the Secretary of the Interior to make a list of the swamp lands and plats of the lands described in the act and transmit the same to the governor of the State, and to cause a patent to issue therefor. Manifestly the intent and purpose of this act was to quiet and confirm the title of the settlers who had purchased and located any of these swamp lands overflowed from the government subsequently to the aforesaid act, and to indemnify the State therefor by payment to the State of all money received for such lands, and by allowing the State to locate an amount of the public lands of the United States, subject to sale at \$1.25 per acre, equal to the amount of such lands located by warrant or scrip subsequently to said grant. It seems that this iniquity and the further selection and approval of swamp lands to the States under these acts, became a source of much controversy between the States and the Department of the Interior, and that the failure of the Secretary to act and adjust these controversies became a grievance which Congress deemed it necessary to provide a remedy by the act of March 3, 1857, which provides—

That the selection of swamp and overflowed lands granted to the several States by the act of Congress approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and the act of the second of March, eighteen hundred and fifty-nine, entitled "An act to aid the State of Louisiana in draining the swamp lands within their limits," heretofore made and reported to the Commissioner of the General Land Office,

so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be, and the same are hereby, confirmed, and shall be approved and patented to the said several States in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: *Provided, however,* That nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March the second, eighteen hundred and fifty-five, which shall be, and is hereby, continued in force and extended to all entries and locations of lands claimed as swamp lands made since its passage. (Statutes at Large, vol. 2, p. 251.)

The agent of the State of Arkansas declares, and it appears to be true, that—

Notwithstanding this, afterwards the Commissioner of the General Land Office proceeded to sell to private individuals 105,000 acres of this land, for which the United States received \$64,575.35½ in money, and the remainder in land warrants. There could be no question that these lands belonged to the State of Arkansas, and the money received for them should go to the State. When, as commissioner of State lands and agent of the State, I applied for this money on behalf of the State of Arkansas, it was refused, the Commissioner of the General Land Office holding that he could only refund to the individual purchasers, and then patent the land to the State. This, notwithstanding in a majority of instances patents had already been issued to the individual purchasers, and the Supreme Court of the United States has held that the department has no power to cancel a patent when once issued. It cannot correct its own error. (Moore v. Robbins, 6 Otto, 96 U. S.)

The impracticability, to say nothing of the injustice of the suggestions of the Commissioner of the General Land Office, is apparent. Many of these lands are now in a high state of cultivation, the owners having valuable and lasting improvements on them. To cancel their title and convey to the State, the latter selling to the highest bidder, would work a mischief to the innocent purchaser which the government cannot afford.

In the case above cited the court say:

While conceding for the present to the fullest extent that when there is a question of contested right between private parties to receive from the United States a patent for any part of the public land, it belongs to the head of the Land Department to decide that question, it is equally clear that when the patent has been awarded to one of the contestants, and has been issued, delivered, and accepted, all right to control the title or to decide on the right to the title has passed from the Land Office. Not only has it passed from the Land Office, but it has passed from the executive department of the government. A moment's consideration will show that this must, in the nature of things, be so.

Taking this for granted, it follows that there has grown up under these several acts a condition of things which it is not in the power of the Interior Department of the government to properly adjust and settle according to the true intent and meaning of the law, and that legislation is necessary to carry into effect the intent and purpose of these various acts, and to finally settle all these matters up.

The bill under consideration provides for the confirmation to the State of Arkansas of all selections of swamp and overflowed lands heretofore made and reported to the Commissioner of the General Land Office.

2d. It provides a speedy, just, and satisfactory way of settling all conflicts between the United States, the State, and certain individuals, and railroad companies, growing out of the action of the Land Department in selling to individuals and approving to certain railroad companies lands which had been previously granted to the State by the act of September 28, 1850.

3d. It removes all difficulties in the way of a settlement.

4th. The expense of the settlement will be reasonable and will be equally borne by the government and the State. The committee concur in the opinion that the bill, as amended, should pass.

JOHN B. NIX.

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APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. DUNN, from the Committee on Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 2487.]

The Committee on Public Lands, to whom was referred the bill (H. R. 2487) for the relief of John B. Nix, report the same back and recommend its passage.

The committee, finding the memorial of John B. Nix to be a true statement of the facts, adopt said memorial as their report.

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MEMORIAL OF JOHN B. NIX.

*In the Senate and House of Representatives of the United States of America in Congress assembled:*

Your memorialist, John B. Nix, a citizen of the United States, thirty-six years of age, respectfully represents that he is the lawful heir and the only son of Sarah Nix, deceased. That about the close of the year 1846, my mother, Sarah Nix, settled upon the northeast quarter of section numbered 30, township numbered 15 south, of range numbered 28 west of the fifth principal meridian, then in La Fayette County, State of Arkansas, at or near the west boundary of said State. That she built a dwelling-house and out-houses, cleared and fenced a small farm. Being a widow and poor, she knew not how to proceed to secure it as a home from the government, and being at a great distance from any one possessing knowledge of the law, was left to such advice as was best attainable, and consequently many mistakes have been made, unimportant in their nature and which were of no detriment to others, as there were no parties claiming adversely.

On the 22d day of April, 1853, she sent Mr. Aquilla Carr, as her agent, to the local United States land office, 50 miles distant, then kept at Washington, Ark., to file her declaratory statement, which he did on the said northeast quarter or tract of land above described, and which is now in the district of lands for sale at the United States land office at Camden, Ark. Having made this filing, she was informed that she had a preference right over all others to purchase the tract of land described, and rested under the belief that she had done all that was on that point required of her to secure her title to the land under the pre-emption law, and that all that remained to be done was to make payment at the proper time. About one year thereafter your memorialist received, as a gift from his grandfather, in South Carolina, the sum of \$50, which was sent to the United States land office at Washington, Ark., to be applied on the payment of the tract of land above referred to. This sum was sent by my uncle, Benjamin Nix, and the register and receiver agreed to receive the same if Sarah Nix would send her affidavit that she had made the proper improvement on said tract. Accordingly she appeared before a justice of the peace, living in her neighborhood, and made the affidavit, which was carried to the land office by Benjamin Nix. The receiver took the money and gave a receipt for it of some kind, which has long since been lost. No further action was ever taken by my mother, Sarah Nix, for reasons hereafter stated, nor was any patent ever expected for that partial payment, as it was intended simply as a deposit, the money being in hand to be applied when full payment was made. Shortly after this payment she was informed, and in fact it was the

common understanding in the county, that on account of a proposed railroad no more money would be received by the government for public land in the neighborhood until the railroad was built, and then it would be at the increased price of \$2.50 per acre. With this understanding, the matter rested, and my mother, Sarah Nix, died December 23, 1863, having never left her settlement, above described, and on which place your memorialist has lived up to the present time.

About the close of 1873, the Cairo and Fulton Railroad was completed to the Texas boundary, passing through the above described tract of land, and the company laid claim to three forties, or one hundred and twenty acres of the same, ordering your memorialist to stop plowing and cultivating the same, but which order has not been obeyed.

Your memorialist, being well advised as he believes, when the said railroad company advertised to sell their lands from Little Rock to the Texas boundary, to wit, in May or June, 1874, for the sake of peace, and being willing to pay the government and the railroad company both, rather than have a lawsuit, went to Little Rock and offered to pay the company \$2.50 per acre for their quietclaim to the land, which they refused, and notwithstanding they advertised that they would give actual settlers the preference over all others, to save their homes, the land commissioner of the company refused the money when proffered in United States legal-tender notes, but very soon thereafter sold the same land to one of their own officers, who has annoyed your memorialist in persistent efforts to obtain possession. This was Thomas Allen, of Saint Louis, the president then, as now, of the said Cairo and Fulton, now Saint Louis, Iron Mountain and Southern Railway Company. Your memorialist believes and states that said sale was fraudulent, collusive, and void, and intended only to effect and defeat, if possible, the title of mine. This will appear when it is stated that Mr. Allen, as president of the road, made a power of attorney to Mr. Loughborough to convey the land, and Mr. Loughborough, within a short time thereafter, conveyed the same to Mr. Allen, and all this with a full knowledge of the rights and equities of your memorialist.

In October, 1877, the President of the United States issued a proclamation restoring the public lands in the Camden district to market, sale to commence the 4th day of February, 1878. Your memorialist, after considerable correspondence with the register of the United States land office, and being advised by him what course to pursue, as will appear from his letters herewith submitted for your perusal, went to the United States local office at Camden, Ark., and paid into that office \$300, for which an unconditional receipt was given by the register, the receiver being absent at the time (a copy of which is herewith submitted, bearing date of January 22, 1878), and afterwards received a conditional receipt from the receiver. When this money was paid your memorialist, by his affidavit as the heir of Sarah Nix, deceased, and the testimony of two credible witnesses, made the proof on the entire northeast quarter of section No 30, of township No. 15 south, of range 28 west of the fifth principal meridian.

Your memorialist made the proper and usual proof on the whole one hundred and sixty acres, not supposing anything done by Sarah Nix could be regarded as final pre-emption proof, and for the further reason that the register of the land office at Camden advised me to that course. Supposing that I had done all the law required me to do, I expected to receive a patent from the General Land Office, but you can imagine my surprise when I was notified that the Commissioner of the General Land Office had on the 25th of March, 1878, rejected my application to prove up and pay for the pre-emption of my mother as her heir, on the ground mainly that the payment of the \$50 by my mother, Sarah Nix, made on the 31st day of March, 1854, appeared on the records in the General Land Office as an entry in regular form, and operated as a waiver to all but a portion of the tract which was covered by the said payment. As before stated, that payment was intended to be a deposit, on what would, in proper time, become an entry when the whole tract was proved up and paid for. Sarah Nix paid \$50 and made an affidavit that she lived upon the land and had made an improvement in compliance with the requirements of the district officers. This oath she made before a justice of the peace near her home, and not before the register, as the record shows in the General Land Office, and it certainly was not her intention to waive any right to any portion of her claim, but she, on the contrary, was struggling to make arrangements to secure her home when the proper time should arrive for final payment, nor was anything further ever required of her, though the records show that a good deal more has been done, which need not be wondered at, when we examine the correspondence of the Commissioner with that local officer. (See letters of the Commissioner dated October 6, 1854, and October 10, 1854, and February 5, 1855.) In the last named letter the proof ordered to be taken over again by Mr. Wilson, the Commissioner. Notwithstanding these facts, the present Commissioner, in his decision of the 25th of March, 1878, says, "This quarter section is within the six-mile limit of the grant for the Cairo and Fulton, now the Saint Louis, Iron Mountain and Southern Railway Company, the right of which attached January 17, 1855, and was included

in the withdrawal ordered for the benefit of said road by letter of May 19, 1853, from this office." From this it appears that the local office at Washington, Ark., disobeyed instructions from the General Land Office when they received Sarah Nix's money and attempted to make a sale of any portion of the tract.

Your memorialist believed when he made the proof and payment at Camden, Ark., on January 22, 1878, under the proclamation of the President restoring the land to market, that no other entry had been made according to law, and that any other pretending to be an entry is the result of ignorance and an effort of the local officers at Washington, Ark., to remedy an official blunder, made by them, so as to relieve themselves by making it appear that the \$50 was paid as final proof on forty acres of the tract, instead of having been received as a partial payment on the entire tract.

Your memorialist helped to clear and cultivate the above described land prior to the passage of the act of February 9, 1853, making the land grant for the Cairo and Fulton Railroad, and, as can be proven, these improvements cover portions of each legal subdivision of the tract. We submit that, in view of the second section of the act making the grant, it was not intended that the grant should apply to lands like this, where settlement rights had attached. And in this connection, attention is called to the act of Congress approved March 27, 1854. (U. S. Stats., Vol. 10, p. 269.) The present Commissioner, by his decision of the 25th of March, 1878, rejecting the proof and payment made by your memorialist on the 22d day of January, 1878, at Camden, Ark., says that on the 13th July, 1857, three-fourths of the tract upon which Sarah Nix settled and made cultivation was approved to the State for the benefit of a railroad. We submit that by section 2449 of the Revised Statutes this approval is of no effect, and ought in no manner to prejudice the interests of a *bona fide* settler.

Your memorialist most respectfully avers that, from the inception of the pre-emption claim referred to until the present time, there has been but one intent, and that was to secure, by a compliance with the law, a home; that the spirit of the law has in every respect been complied with, and that ample improvements have been made to satisfy the requirements of the law; that these improvements extend over every subdivision of the land, and that he has continued in possession and paid taxes on the entire tract. Whatever irregularities may appear do not affect his good faith as a pre-emptor, but have arisen through a misapprehension of the rule of the department, or through erroneous advice from the local officers, and, so far as the application of the fifty dollars is concerned, through their error in making it appear as a final entry of a portion of the tract.

In view of these facts, your memorialist prays that your honorable body give such relief in the premises as may enable him to make full entry of the entire tract of land originally filed upon by his mother, and that the honorable Secretary of the Interior be requested to stay further proceedings in the case, pending the consideration of this petition. And, to the end that justice may be done, your memorialist will ever pray.

JOHN B. NIX.

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## SCHOOL LANDS TO KANSAS.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany H. Res. 123.]

*The Committee on the Public Lands, to whom was referred H. Joint Res. 123, have had the same under consideration, and submit the following report:*

The resolution under consideration authorizes the Secretary of the Interior to certify to the State of Kansas indemnity school lands in lieu of school sections 16 and 36, situated in Indian reservations in said State, and sold by the United States in pursuance of treaty stipulations.

The lands to be certified under this resolution are indemnity lands selected by the State in pursuance of a decision of the Commissioner of the General Land Office, bearing date August 14, 1877, and approved by the Secretary of the Interior August 18, 1877. The decision of the Commissioner and Secretary was based mainly upon the following provisions of law:

1st. The act organizing the Territory of Kansas, which provides:

That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States preparatory to bringing the same into market, sections numbered 16 and 36 in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be created out of the same. (10 Stat., 239.)

2d. The act admitting the State into the Union, which provides:

That sections numbered 16 and 36 in every township of public lands in said State, and where either of said sections or any part thereof has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools. \* \* \* (12 Stat., 127.)

When this act was passed there were a large number of Indian reservations within the State which have subsequently been ceded to the United States in trust and sold for the benefit of the Indians, sections 16 and 36 included. The school sections in these reservations having thus been disposed of, the State applied to the Secretary of the Interior for other lands in lieu thereof and equivalent thereto, who, in August, 1877, as already stated, decided that the State was entitled to the same.

Under this decision, accompanied with proper instructions to the local United States land officers within the State, the governor was authorized to select the indemnity lands to which the State was entitled. In due time this was done, and lists of the same were forwarded by the local land officers to the Commissioner of the General Land Office for final action.

When the lists thus selected reached the Secretary, doubts were entertained as to his right to certify the same to the State, and accordingly the questions of doubt were referred to the Attorney-General for his opinion thereon.

The Attorney-General, after duly considering the same, rendered an opinion to the effect that the State was entitled to indemnity lands in lieu of sections 16 and 36 in all reservations within the State, except such as had been conveyed by patent in fee simple to the tribes before the organization of the Territory; and of these, in his opinion to the Secretary, dated January 21, 1880, he says:

If hereafter it shall be deemed that the townships thus separated from the public lands before the organization of either the Territory or State should be provided for by grants, it seems to me that legislation will be required for such purpose.

The lands selected by the State, and embraced in the lists covered by the resolution herewith, are equivalent, acre for acre, to the said sections 16 and 36 in Indian reservations disposed of by the United States, as above stated, and comprise about 45,000 acres.

Your committee recommend that the resolution be passed.

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## OSAGE INDIAN TRUST LANDS.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 5629.]

*The Committee on the Public Lands, to whom was referred bill H. R. 4407, having had the same under consideration, make the following report thereon:*

The lands covered by this bill lie east of the sixth principal meridian, and embrace that portion of the said Osage Indian trust and diminished reserve which has been subject to settlement from eight to fifteen years last past, so that about all of the lands fit in any respect for agricultural purposes are already occupied. The lands remaining and to which the provisions of this bill are applicable are broken, consisting largely of bluffs, long ranges of flint hills, and deep ravines, fit only for pastoral purposes, and are in fact of very inferior quality, salable only at reduced prices and in quantities suitable for maintaining cattle and sheep. But your committee, believing said lands should be sold for the highest price they will bring in the market, do recommend the passage of the substitute of said bill, herewith reported, providing for the sale of said lands at public auction, to the highest cash bidder, at not less than the rates specified in the original bill; and as the government is under treaty obligation not to sell said lands for less than \$1.25 per acre, it is provided by said substitute that no proceeding shall be had under the provisions thereof until the Osage Indians shall assent thereto.



## FORT DODGE MILITARY RESERVATION.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### R E P O R T :

[To accompany bill H. R. 3191.]

*The Committee on the Public Lands, to whom was referred bill H. R. 3191, having had the same under consideration, make the following report thereon :*

The bill authorizes the Secretary of the Interior to dispose of a certain portion of the Fort Dodge military reservation, in the State of Kansas, to actual settlers under the homestead laws.

It will appear from the letters of the Adjutant-General of the Army and the honorable Secretary of War, which are made a part of this report, that all that portion of said reservation lying north of the Atchison, Topeka and Santa Fé Railroad is no longer needed for military purposes, and that the General of the Army and the honorable Secretary of War recommend that the same be disposed of under the general land laws of the United States.

Your committee, therefore, recommend the passage of said bill, amended to conform to the boundaries suggested by the General of the Army and the honorable Secretary of War.

WAR DEPARTMENT,  
*Washington City, February 17, 1880.*

SIR: In reply to letter of the 14th ultimo from the Committee on the Public Lands of the House of Representatives, by its clerk, Mr. W. C. Langan, inclosing bill H. R. 3191 (herewith returned), being a bill to authorize the Secretary of the Interior to dispose of a part of the Fort Dodge military reservation, &c., and requesting information as to the views of this department in relation thereto, I have the honor to inclose herewith a report upon the subject by the Adjutant-General, dated the 14th instant, together with the papers therein referred to.

The recommendation of the General of the Army, as embodied in the inclosed report, is concurred in by this department.

Very respectfully, your obedient servant,

ALEX. RAMSEY,  
*Secretary of War.*

Hon. GEO. L. CONVERSE,  
*Chairman of Committee on the Public Lands, House of Representatives.*

HEADQUARTERS OF THE ARMY,  
ADJUTANT-GENERAL'S OFFICE,  
*Washington, February 14, 1880.*

SIR: I have the honor to return herewith communication dated January 14, 1880, from the House Committee on the Public Lands (by its clerk), referring for consideration and opinion a bill (H. R. 3191) to authorize the Secretary of the Interior to dispose of a part of the Fort Dodge military reservation to actual settlers under the provisions of the homestead laws, referred to this office for report, and to state as follows:

## FORT DODGE MILITARY RESERVATION.

The Fort Dodge military reservation was declared by the President June 22, 1868, with boundaries as announced in General Orders No. 17 of 1868, Department of the Missouri, copy herewith. The area is nearly 68 square miles.

In reporting upon a bill introduced at the third session Forty-fifth Congress (S. 1505), authorizing the sale of that portion of the reservation lying north of the track of the Atchison, Topeka and Santa Fe Railroad, General Pope, commanding Department of the Missouri, stated that the portion north of the railroad was not needed for military purposes, and the Lieutenant-General recommended that said portion be disposed of.

A copy of the present papers, having been referred for report to General Pope has been returned, with a sketch (copy herewith) showing the section lines and location of the railroad, and with report that he does not think the public interests would be injuriously affected by the sale of subdivisions numbered 1 to 21 (inclusive) in the sketch, but that the other subdivisions embraced in the bill should not be sold.

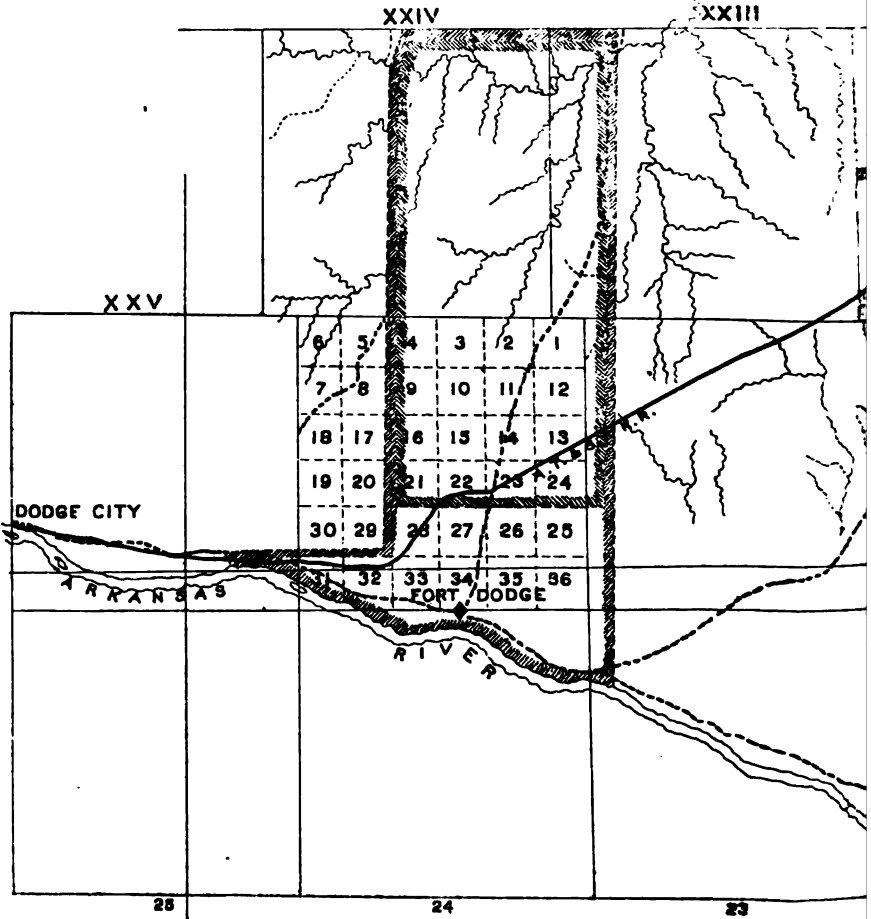
The papers having been laid before the General of the Army, he recommends that all of the reservation north of the railroad be relinquished as a military reservation and revert to the public domain, subject to the general land laws of that district.

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,  
*Adjutant-General.*

The Hon. SECRETARY OF WAR.

*Plat of the military reservation of Fort Dodge, Kansas, showing land to be sold by bill H. R. 3191.*



FORT DODGE MILITARY RESERVATION.

3

[General Orders No. 17.]

HEADQUARTERS DEPARTMENT OF THE MISSOURI,  
*Fort Leavenworth, Kans., May 29, 1868.*

Subject to the approval of the Secretary of War, the military reservation at Fort Dodge is designated as follows:

The initial point is three miles nine hundred and ninety-three yards east  $23^{\circ} 47'$  south of the flag-staff; thence the boundary of the reservation runs fourteen miles north, thence four miles and one-half west, thence one mile south  $26^{\circ}$  west, thence ten miles south, thence three miles west, thence four hundred and nineteen yards south to the north bank of the Arkansas River, thence along the north bank of said river in a southeasterly direction to the initial point.

The points of the compass mentioned are true points, not magnetic.

The variation of the compass in March, 1868, when the survey was made, was  $13^{\circ}$  east.

At each corner of the reservation a cut stone (grey sandstone) is sunk, having "U. S. Mil. Res." chiseled on one side. Every half mile along the boundary line there is a wooden stake painted "U. S. Mil. Res." The stone at the southeast corner is set back fifteen feet, with a stake at the edge of the bank.

The reservation contains 67 square miles 581 acres and 1,680 square yards, more or less.

By command of Major-General Sheridan :

CHAUNCEY MCKEEVER,  
*Assistant Adjutant-General.*

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## NEW LAND DISTRICT IN KANSAS.

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APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 2481.]

*The Committee on the Public Lands, to whom was referred bill H. R. 2481, having had the same under consideration, make the following report thereon:*

From the facts stated in the letters of the honorable Secretary of the Interior and the honorable Commissioner of the General Land Office, which are made a part of this report, it appears that the land district provided for by the bill is greatly needed for the accommodation of settlers upon the public lands within its limits.

DEPARTMENT OF THE INTERIOR,  
*Washington, February 6, 1880.*

SIR: In reply to inquiry made of the Commissioner of the General Land Office as to the propriety of passing House bill 2481, "to create an additional land district in the State of Kansas," &c., I inclose to you herewith a copy of a letter addressed to me by the Commissioner on the 31st ultimo, in regard to Senate bill 978, which is identical with H. R. 2481.

The Commissioner recommends that the bill become a law, and in his opinion I concur.

Very respectfully, &c.,

C. SCHURZ, *Secretary.*

Hon. GEO. L. CONVERSE,  
*Chairman Committee on Public Lands, House of Representatives.*

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DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
*Washington, D. C., January 31, 1880.*

SIR: I have received, by your reference for report, a communication from the Senate Committee on Public Lands, together with a copy of Senate bill No. 978, "to create an additional land district in the State of Kansas."

It appears, from an examination of the records of this office, that during the past year there were 12,929 entries of all kinds made within the limits of the Kirwin district as at present constituted, and that 4,732 entries, or more than one-third of the entire number, were made within the limits of the proposed new district. The present Kirwin district covers a large area, being 300 miles in length, and persons living in the western portion are compelled to travel long distances to reach the office. The business of the entire district represents an amount of \$44,500 received by the officers as fees and commissions. A maximum office is one where the fees and commissions are equal to the salaries received by the local officers, which is \$3,000 to each.

It thus appears that the present Kirwin district is doing a business equal to seven maximum offices, and as the fees and commissions are paid by the settlers and others making entries of the public domain, it is but just that their convenience be served as far as practicable by the creation of new offices when needed.

I have therefore to express my approval of the proposed measure, and to recommend that the same become a law.

Very respectfully,

J. M. ARMSTRONG,  
*Acting Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

## NEW LAND DISTRICT IN KANSAS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 3, 1880.*

SIR: I have received from the House Committee on Public Lands for report a copy of bill H. R. 2481, "to create an additional land district in the State of Kansas." This bill is identical with Senate bill No. 978, on which report was made January 31. I transmit herewith a copy of my report to be forwarded to the House committee.

Very respectfully,

J. M. ARMSTRONG,  
*Acting Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

Your committee therefore recommend the passage of the bill.

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## YAKIMA LAND DISTRICT IN WASHINGTON TERRITORY.

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APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 1291.]

The Committee on the Public Lands, to whom was referred bill H. R. 1291, having had the same under consideration, recommend the passage thereof, with the amendment reported herewith, for reasons stated in the several letters from the honorable Secretary of the Interior and the honorable Commissioner of the General Land Office, which are made a part of this report.

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DEPARTMENT OF THE INTERIOR,  
*Washington, March 2, 1880.*

SIR: I transmit herewith a copy of a letter addressed to me on the 25th ultimo by the Commissioner of the General Land Office, who recommends the passage of the bill (H. R. 1291) "creating Yakima land district in Washington Territory," with certain amendments indicated.

I concur in the opinion of the Commissioner, and inclose a diagram showing the southern boundary of the proposed district as recommended.

Very respectfully, &c.,

C. SCHURZ,  
*Secretary.*

HON. GEORGE L. CONVERSE,  
*Chairman Committee on the Public Lands, House of Representatives.*

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 25, 1880.*

SIR: I have received by reference, for report, from the House Committee on the Public Lands, a copy of bill H. R. 1291, creating the Yakima land district in Washington Territory.

The matter having received full consideration in this office, I am prepared to recommend the establishment of the proposed district when the bill is so amended as to make its southern boundary the line between townships 6 and 7 north. The amended bill will then read as follows:

"Commencing at a point at the intersection of the line between townships six and seven north, and between ranges twenty-seven and twenty-eight east of the Willamette meridian, and running westerly along said line between townships six and seven north to the summit of the Cascade Mountains; thence northerly along said summit to the boundary line between the United States and British Columbia; thence east along said line to the Columbia guide meridian; thence south on said meridian to the line between townships sixteen and seventeen north; thence west along said line to

the line between ranges twenty-seven and twenty-eight east; thence south line to the place of beginning."

This alteration of the limits proposed by the bill is recommended for the townships along the Columbia River, and now forming parts of the and Walla Walla districts, are more accessible to those points, and the country settlers will be better served by permitting them to remain as at present attaching them to the Yakima district, which office would be remote from the

The Vancouver district is already so small that the officers receive but less than one-half the maximum salaries, and it would be unwise to deprive of any territory at present.

With the amendments made as herein indicated, I recommend the passage of the bill.

In the accompanying diagram a green line indicates the southern boundary of the proposed district as recommended.

Very respectfully,

J. M. ARMSTRONG  
*Acting Commissioner*

The Hon. SECRETARY OF THE INTERIOR.

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## FEEs OF REGISTERS AND RECEIVERS.

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APRIL 6, 1860.—Referred to the House Calendar and ordered to be printed.

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Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 5630.]

The Committee on the Public Lands, to whom was referred bill H. R. 1233, recommend the passage of a substitute therefor, repealing the provision of law which authorizes the fees referred to in said bill.

The fees authorized by said provision of law, although evidently intended as compensation to registers and receivers for reducing to writing testimony for claimants in establishing pre-emption and homestead rights, at the rate of 15 cents per hundred words, the department has refused to so construe it; in fact, the department holds that such fees must be paid into the Treasury of the United States. The aggregate amount of such fees paid into the Treasury by settlers on the public lands during the last fiscal year is about \$20,000. No part of said fees is necessary to maintain the local land offices, for it appears from the records that the aggregate cost of maintaining all the local land offices in the United States during the last fiscal year amounted to but a little over \$300,000, whereas the aggregate amount of fees actually paid by the settlers upon the public land during the same period exceeded \$900,000.

It therefore appears to your committee unjust to such settlers to compel them to pay a fee which is neither used nor necessary to compensate the land officers or defray the cost of maintaining the local land offices, but which is practically a bonus by them paid into the Treasury of the United States.



## CERTAIN PRE-EMPTORS IN KANSAS.

L. 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

THOMAS RYAN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 4859.]

The Committee on the Public Lands, to whom was referred bill H. R. 4859, have had the same under consideration and respectfully recommend the passage thereof. The facts in relation thereto are fully stated in the several letters from the Department and the memorial submitted herewith.

DEPARTMENT OF THE INTERIOR,  
Washington, March 11, 1880.

Sir: Bill H. R. 4859, "for the relief of certain pre-emptors in the State of Kansas," the accompanying memorial, was received by reference of your committee, and forwarded to the Commissioner of the General Land Office. I have the honor to transmit herewith copy of the report of the Acting Commissioner on the subject, and to state that I concur in the views set forth in the report. The memorial is returned herewith, and I also transmit a copy of the last annual report of the Commissioner of the General Land Office, to a portion of which reference is made in the report of the Acting Commissioner.

Very respectfully,

C. SCHURZ, *Secretary.*

GEO. L. CONVERSE,  
*Chairman of the Committee on the Public Lands,  
House of Representatives.*

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
Washington, D. C., March 10, 1880.

Sir: I am in receipt, by reference of Hon. A. Bell, Assistant Secretary, of the letter of C. Langan, clerk to the Committee on the Public Lands, House of Representatives, inclosing the bill (H. R. 4859) entitled "A bill for the relief of certain pre-emptors in the State of Kansas," and accompanying memorial, for report. The parties mentioned in the bill, and to whom it is proposed to grant relief, are Ward Farmer, John Justus, John W. Bishop, John Guttery, John C. Furstenberg, and John A. McArthur.

In regard to these parties I have the honor to state that each filed a pre-emption statement for a quarter section of land, and afterward made payment under the pre-emption law for a portion thereof only, the proof covering the entire

On examination of the tract-books developed the fact that said parties had made false entries of the balance of the tract covered by their filings, and this office required of them supplemental proof showing upon what particular subdivision were their respective residences and principal improvements. This supplemental

evidence, when furnished, indicated that the residence and improvements of the parties were upon the land described in the homestead entry, and, therefore, that they had entered land under the pre-emption law upon which they had established no residence; or, in other words, that they were seeking to perfect title to different tracts of land under the provisions of two different laws, each requiring residence, &c., by virtue of having established a residence on one tract only.

This office appreciated the fact that the parties had probably been misled by the advice of the local officers, under the act of March 3, 1877 (19 Stats., 404), entitled "An act for the relief of settlers on the public lands under the pre-emption laws," and did not treat the entries as having been fraudulently made, but allowed them such relief as the law afforded.

In one case, that of John McArthur, I find that the pre-emption entry upon the request of the claimant has been canceled, and that he has made an entry of the same land under the act of March 3, 1879, entitled "An act to grant additional rights to homestead settlers on public lands within railroad limits."

As construed by this office, the act last referred to will afford each of the parties mentioned in the bill adequate relief on this point, and, therefore, I perceive no necessity for the enactment of the first thirteen lines of the bill, down to the word "land," into a law.

As regards the remaining provision of the bill, intended to provide for a return to the parties of the purchase-money paid by them, I respectfully invite your attention to pages 173, 174, and 175 of the annual report of the General Land Office for the year 1879 (copy herewith), regarding payments, and more particularly to the amendment proposed to section 2362 of the Revised Statutes.

The bill before me provides for a *few* only of the large number of persons known to be in a similar condition.

I understand that a bill has been introduced in the House of Representatives for the relief of parties in the Fargo land district, Dakota, who have made entries in a similar manner.

While I have no objection to the refundment to the parties mentioned of the money paid by them in the manner stated, by the passage of this special bill, it appears to me that it would be better legislation to enact a law which would cover the entire subject of repayments.

These parties, and all of the same class, are undoubtedly equitably entitled to a return of the purchase-money paid by them; but, under the provisions of section 2362 of the revised Statutes, as construed by the department, repayment can only be made where, for some reason, the *government* can not confirm the title.

I return herewith the bill and memorial.

I am, sir, very respectfully, your obedient servant,

J. M. ARMSTRONG,  
*Acting Commissioner.*

Hon. C. SCHURZ,  
*Secretary of the Interior.*

*To the honorable the Senate and House of Representatives in Congress assembled:*

Your memorialists, John C. Furstenberg, Leonard Farmer, John Gintery, John W. Bishop, John Justus, and John A. McArthur, respectfully represent that they filed under the pre-emption laws of the United States, upon certain lands in the Wichita land district, State of Kansas, as will more fully appear hereafter. That the lands upon which they filed as pre-emptors lay within the railroad limits of the Atchison, Topeka and Santa Fé Railroad, and were rated at \$2.50 per acre. That when the time has expired within which, under the law, they were required to prove up upon their several pre-emption claims, they were, by reason of the failure of crops and the ravages of the grasshoppers, unable to pay the full price required by law; and as they never had availed themselves of the benefits of the homestead law, they paid for 40 acres of their pre-emption claims and entered the remainder under the homestead law. In doing this they acted under the advice of the local officers, and believed that by so doing they were proceeding orderly under the statute and regulations of the department. It became necessary, however, in doing this that their residences should be upon the 80 acres occupied as a homestead, although their improvements were made on both tracts.

When they came to ask for patent on their pre-emption claims, on which they paid in each case \$200, they were informed that for the reason that their residence was on the tract claimed as a homestead, they could not receive patents as pre-emptors for the part covered by their pre-emption claims. In other words, the impossibility was required of residing upon both claims at the same time.

Your memorialists further represent that since the date of their said entries, and on the 31st of March, 1879, a law was passed which permits any one, qualified, to take



160 acres of land, rated at \$2.50 an acre, under the homestead laws, and that they can now complete their original entry under the provisions of that law. But, on applying for the repayment of their money, they were informed by the department that there was no provision of law which authorized it to pay back the money for the reason that the United States could have made title on the land if your memorialists had resided thereon.

We find ourselves in this condition, then, that the money we paid as pre-emptors is held by the United States, but that the government declines to issue patent for the land sought to be entered. We cannot receive our patent nor get our purchase-money of \$1,200 in the aggregate. We now ask that we may be permitted to enter land as a homestead, in each case, the same as every other qualified citizen is permitted to do, and that the money now held by the United States, for which no equivalent has been or can be given, be refunded to us.

The land claimed and respectively entered by your memorialists is as follows:

John C. Fursentenburg: Northeast quarter section 22, 22 south, 9 west.

Leonard Farmer: Northwest quarter section 20, 22 south, 8 west.

John Guttery: Southwest quarter section 8, 22 south, 8 west.

John W. Bishop: Northwest quarter section 34, 22 south, 8 west.

John A. McArthur: Northwest quarter section 22, 22 south, 4 west.

John Justus: Southeast quarter section 10, 22 south, 8 west.

The Commissioner of the General Land Office holds that under existing laws he can afford to your memorialists no relief, and we would therefore ask your honorable body that such legislation may be had by you as will save to us our homes, and also return to us our money for which no equivalent can be given by the government, and as in duty bound will ever pray.

JOHN C. FURSTENBERG,

LEONARD FARMER,

JOHN GUTTERY,

JOHN W. BISHOP,

JOHN JUSTUS,

JOHN A. MCARTHUR,

By L. A. BIGGER, *Attorney in fact.*



HOUSTON L. TAYLOR.

6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

THOMAS RYAN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 4862.]

*Committee on the Public Lands, to whom was referred the bill (H. R. 4862) for the relief of Houston L. Taylor, respectfully submit the following report:*

For four years, ending May 1, 1879, Mr. Taylor was register of the land-office at Wichita, Kans. The maximum compensation allowed by law to registers is \$3,000, of which \$500 is a fixed salary, and the balance is made from fees and commissions. Up to July 1, 1878, in accordance with the regular fees, it was permitted by the Department of the Interior to retain certain fees for reducing testimony to writing, to defray the expenses of clerk-hire in taking such testimony; but at the expiration of that time the practice was changed and all fees were ordered to be paid for and paid into the United States Treasury. The proper duties of a register are to superintend the disposal of public lands of the United States, and from the sale of these lands the fees and commissions are derived.

Our committee find, from a statement of the business of the Wichita land-office for the year ending May 1, 1879, that the fees and commissions from the sale of public lands, exclusive of Osage Indian trust and Cherokee strip lands, would reach the maximum allowed by law, and that this business could be done by the register in person without the aid of clerk-hire. Congress, however, placed the disposal of certain Indian lands, being the said Osage trust lands and Cherokee strip lands, upon the register in addition to the duties properly belonging to the office. This additional labor, owing to the great immigration then pouring into Kansas, increased the business of the office threefold; in fact the sale of the Indian lands comprised about 80 per cent. of the work performed at the office, as shown by the following letter from the Commissioner of the General Land Office, and made a part of this report:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
Washington, D. C., March 11, 1880.

I have received, by reference for report, from the subcommittee of the Senate Committee on Claims, a memorial of H. L. Taylor, late register of the land-office at Wichita, Kans., praying to be reimbursed for the amounts claimed to have been expended by him for clerk-hire, which expenses it is alleged were made necessary by the sale of the Osage Indian trust-lands under the direction of the department, and in addition to his regular duties as register.

The following statement, compiled from the records of this office, exhibits the amount of business done at the Wichita land-office during the period for which this claim is made, and the allowance granted for clerical assistance during the same time:

*Receipts at Wichita, Kans., from January 1, 1878, to May 1, 1879.*

From sales of Osage lands .....	\$262,699 64
From sales of Cherokee lands .....	37,967 54
From sales of public lands .....	13,679 06
From fees and commissions .....	18,367 04
Total .....	332,713 28

About 80 per cent. of the business of the office was on account of sales of Indian lands.

The gross earnings of each officer were as follows: \$10,157.15; but the full salary of \$3,000 per annum to each officer was made up by the regular business of the office independent of the Indian lands.

During this period the receiver had credit in an adjustment of his disbursing accounts for the sum of \$1,264, amount paid for clerk-hire under authority of the department, and charged to the Osage fund.

The gross receipts at Wichita were very large, but a statement of receipts merely does not give a correct idea of the amount of work done. While it thus appears that a large proportion of the work done was on account of Indian sales, yet the labor incident to the sale of these Indian lands is much lighter than that incident to the disposal of the public lands by homestead and timber culture entries, &c.

The original application of Mr. Taylor for reimbursement of the sums claimed to have been expended by him for clerk-hire was made in April, 1879, but under the terms of the department letter of date March 23, 1876, this office was directed to give local land-officers to understand that claims for unauthorized clerk-hire could no longer be entertained, and hence this office was precluded from considering his claim.

I transmit herewith copies of the vouchers submitted by Mr. Taylor, and also forward the memorial and letter received from the committee.

Very respectfully,

J. A. WILLIAMSON,  
*Commissioner.*

Hon. C. SCHURZ,  
*Secretary of the Interior.*

To meet this unprecedented increase of work the employment of clerks became a necessity. The office was thronged with applicants to enter these Indian lands, and the register could only attend to their wants by the aid of clerks, or compel them to wait day after day until they could be reached in their order. It was a physical impossibility for the register in person to attend to the increased business. He accordingly employed assistance in the emergency, for which he paid the sum of \$1,494.98 out of his own funds, and which he now asks to be repaid to him.

Under the treaty of September 29, 1865, and act of Congress July 15, 1870, these lands are to be sold for the benefit of the Osage Indians, and the treaty provides that the expenses of the sales shall be paid out of the money derived therefrom. Objection was made by the Secretary of the Interior to the payment of the sum named in the bill, because there had been no formal authorization of the employment of the clerks, and not because there was not a positive need for such employment, or that the claim was not just.

Your committee are of opinion that the expenses incurred by Taylor were necessitated by the demands of public policy; that to have done otherwise under the circumstances would have caused great inconvenience and hardship to settlers desiring to enter lands; that the amount incurred can justly be paid out of the Indian fund arising from the sale of the Indian lands.

If the increased labor forced upon the register by the sale of these lands is to be paid for by himself, it would result in reducing the compensation of \$3,000, allowed him by law, in the disposal of the public lands, to the extent of \$1,494.98, or about one-half. Your committee recommend the passage of the bill.

J. J. MERRICK.

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L. 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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THOMAS RYAN, from the Committee on the Public Lands, submitted the following

## REPORT:

[To accompany bill H. R. 4947.]

*Committee on the Public Lands, to whom was referred bill H. R. 4947, have had the same under consideration, and report as follows :*

That on the 8th day of March, 1878, J. J. Merrick entered the land described in the bill and paid therefor the sum of \$200. Subsequently entry was canceled by the department as being in conflict with the laws relating to town sites.

It is evident to the committee that Mr. Merrick acted in good faith with no intention to defraud the government. The purchase-money having been covered into the Treasury, it can only be refunded by the majority of Congress.

The memorial of Mr. Merrick is as follows:

MEMORIAL OF J. J. MERRICK, OF HARPER CITY, HARPER COUNTY, KANS.

Your memorialist respectfully represents that he settled on the southeast quarter of section 1, in township 32 south, range 7 west, in Harper County, Kansas; that he was the first bona-fide settler in the county; and that he made a legal settlement on the land early in the spring of 1877, and placed valuable improvements thereon, with the intention at that time of purchasing the same under the provisions of the pre-emption laws, for farming purposes.

Your memorialist would further represent that some months subsequent to his settlement the Harper City Town Company was organized, and, owing to its favorable location, selected this tract of land for the Harper City town-site in the then unorganized territory of Harper.

Your memorialist would also represent that some time after the organization above mentioned was effected another organization, known as the Anthony Town Company, was created, and located their town-site claim about ten miles from Harper, and it soon became apparent that the Anthony Town Company would strive to rival the pioneer town company of Harper City and contest for the location of the county-seat upon the organization of the county, which by this time was being effected. Therefore, for the purpose of expediting matters and to enable your memorialist to enter the land in the sole object in view of being able to make good warrantee titles to their property, and, after providing for all the occupants up to this time, would still have left a residue, which the town company expected to use in a manner that would benefit the county by greatly increasing their population, and thus secure to themselves the permanent location of the county-seat, the town company relinquished to your memorialist all their interest in and to said tract, believing that by so doing your memorialist might, by virtue of his prior settlement and claim, legally enter the same, having no knowledge whatever of the existence or force of the town-site act.

Thereupon your memorialist did, on the 8th day of March, 1878, enter the foregoing-described tract of land, paying therefor the sum of \$200, supposing that he was liter-

ally complying with the requirements of the law, being at that time wholly ignorant of the town-site act, and never did know of the conflict until he received notice from the honorable Commissioner of the General Land Office of the cancellation of his said entry by reason of conflict with the town-site act; hence he was entirely innocent of any intention to commit fraud.

Your petitioner would further represent that he has been informed by the general office that said purchase-money has been covered into the Treasury of the United States, and that the money cannot be refunded to him without authority of Congress. He, therefore, respectfully requests that the accompanying bill for his relief may be enacted.

J. J. MERRICK,  
By H. L. TAYLOR,  
*His Attorney in Fact.*

The committee, therefore, recommend the passage of the bill.

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## IRON MOUNTAIN RAILROAD LANDS.

APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. MCKENZIE, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 1673.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 1673) relating to certain lands in the State of Missouri, have examined the same, and respectfully report:*

That by an act of Congress, dated July 4, 1866, certain lands were granted to the State of Missouri to aid in the construction and extension of the Iron Mountain Railroad from its terminus at Pilot Knob to some point on the southern boundary of the State of Missouri.

That section 4 of said act required that said road should be completed within five years from the 1st day of July, 1866, and section 5 provided that in case of a failure to complete said road within the time prescribed by the act, the lands so granted should revert to the United States.

That said road was not completed within the time prescribed by the act, and hence, as stipulated by section 5, nothing passed by the grant.

That, in accordance with said act, the railroad company filed with the Secretary of the Interior a map of a located line of the contemplated extension, but in constructing and extending the road followed an entirely different line, contrary to the stipulations of the act.

That the State of Missouri has taken no steps to perfect the grant, and hence no patents have been issued by the United States for these lands, and the railroad company has not received one acre of land to aid in the extension of its road.

Your committee therefore find the status of these lands to be as follows:

First. By the act of July 4, 1866, these lands were withdrawn from the market, and are not now subject to entry.

Second. The railroad company and the State of Missouri, failing to comply with the stipulations, took nothing by the grant and neither has any title to them.

The result is that, the lands not being subject to entry, the United States is deprived of the revenue that would flow from their sale, this section of country prevented from settlement, and actual settlers from acquiring title to lands they have improved.

Your committee are of the opinion that this is a case that demands immediate attention, and recommend the passage of the bill.





## FORT ABERCROMBIE MILITARY RESERVATION.

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APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. WASHBURN, from the Committee on Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 4216.]

*The Committee on the Public Lands, to whom was referred bill H. R. 4216, having had the same under consideration, report:*

That this bill has for its purpose the restoration to the public domain of that portion of the military reservation of Fort Abercrombie, in the State of Minnesota, and also authorizing the Secretary of the Interior to have the lands embraced therein made subject to homestead and pre-emption entry, and sell the same as other public lands.

Your committee find that this reservation has been abandoned for military purposes for a long time, and the Secretary of War, in answer to an inquiry on the subject, states that "the reservation was relinquished to the custody and control of the Interior Department by the War Department March 25, 1871."

Your committee see no reason why the lands embraced in this reservation should not be subject to the same terms of entry and sale as other lands in the State, and would therefore recommend the passage of this bill.



SETTLERS ON SWAMP LANDS IN MINNESOTA.

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APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

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Mr. WASHBURN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 3697.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 3697) for the relief of certain settlers on swamp lands in Minnesota, make the following report, to wit:*

The committee having had the above bill under consideration, find that the legislature of Minnesota, in 1879, passed an act relinquishing certain swamp lands granted to that State by the United States, and to which lands that State now holds title, to certain settlers on such swamp lands upon the condition the United States shall allow the selection of an equal amount of other land in lieu thereof. The bill is for the relief of these settlers, whose entries or claims are on swamp lands granted to the State instead of government land.

There appears to be no good reason why these settlers shall not be allowed to remain on these lands and the State indemnified by taking other lands as proposed, rather than be compelled to seek new homes. There can be no injustice nor hardship come to any one by so doing, for should the settler be dispossessed of the land upon which he is now located, he could take the identical land which, under the proposed exchange, would go to the State.

The effect of the bill is to exchange lands, and that in the interest of the settler. Your committee would therefore recommend the passage of the bill with an amendment providing that the act shall only be applicable to entries and filings made prior to the passage of the act of the legislature of Minnesota March 10, 1879.

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## FORT RIDGELY MILITARY RESERVATION.

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APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

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Mr. WASHBURN, from the Committee on the Public Lands, submitted the following

### R E P O R T:

[To accompany bill H. R. 3751.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 3751) to amend chapter 198, volume 16, of the Statutes at Large, make the following report:*

Your committee find the purpose of this bill is to open the Fort Ridgely military reservation in Minnesota to homestead and timber-culture entry, the same as other lands in the State. This reservation has already been restored to the public domain by the act sought to be amended, being "An act for the disposal of the lands within the Fort Ridgely military reservation, Minnesota," and there seems no good reason why the lands embraced in this reservation should not be subject to the same terms of entry as other lands in Minnesota.

The Secretary of War having been addressed on the subject, replies that he "knows of no objection to the bill."

The committee have amended the bill so as to except from its operation that portion of the reservation already deeded to the United States for the uses of a cemetery.

With this amendment, your committee recommend the passage of the bill.



WORTHINGTON AND SIOUX FALLS RAILROAD COMPANY.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. WASHBURN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 1312.]

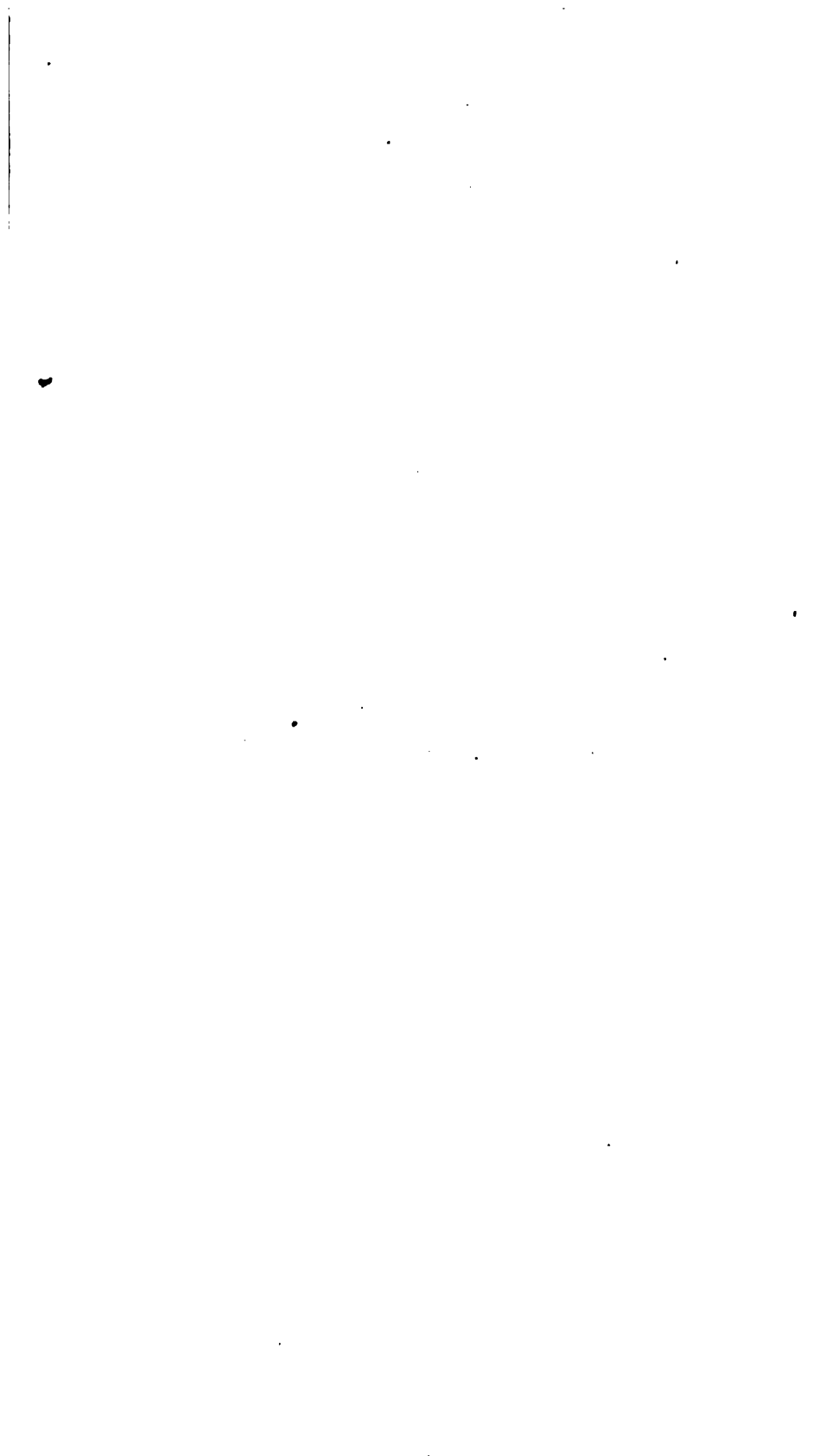
*The Committee on the Public Lands, to whom was referred bill H. R. 1312, having had the same under consideration, submit the following report:*

This bill authorizes the Worthington and Sioux Falls Railroad Company to extend its line from the village of Sioux Falls, in the Territory of Dakota, to the east bank of the Missouri River, and also grants the right of way through the public lands of the United States to the extent of 100 feet on each side of the central line of said road; also land adjacent to said right of way, not exceeding 160 acres for each 10 miles of its said road, with not to exceed five full sections of land at the terminus of said road on the east bank of the Missouri River.

Your committee find that the section of country proposed to be traversed by this railroad is, for the greater portion of its line, entirely unsettled, and, in fact, very little population on any portion of its line. That the construction of its road as proposed will open up to settlement a very large and rich section of country that otherwise, for want of means of transportation, will remain for many years unoccupied.

This bill, in addition to the right of way of 200 feet, merely grants 160 acres for each 10 miles of road, which becomes especially valuable to the railroad company for depot and town-site purposes, as also the five sections for general terminal and town-site purposes. Without this grant for such purposes, the company investing its money in the construction of its railroad, and in developing and opening up to settlement this large extent of country, is liable to be wronged and preyed upon by town-site speculators, who, learning the plans of the company in advance, secure these important sites and are thereby enabled to speculate at the expense of other people's money and enterprise.

Your committee think it but just that the railroad company should be protected to this extent, and would therefore recommend the passage of the bill.





CHICAGO, MILWAUKEE AND SAINT PAUL RAILWAY COMPANY.

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APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. WASHBURN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 1313.]

*The Committee on the Public Lands, to whom was referred bill H. R. 1313, having had the same under consideration, submit the following report:*

This bill authorizes the Chicago, Milwaukee and Saint Paul Railway Company to extend its line from the eastern boundary of the Territory of Dakota, starting from a point on the Big Sioux River at or near the village of Canton, into or through certain counties, to such point on the east bank of the Missouri River as said company may select, and also grants the right of way through the public lands of the United States to the extent of 100 feet on each side of the central line of said road; also land adjacent to said right of way, not exceeding 160 acres for each ten miles of its said road, with not to exceed five full sections of land on the east bank of the Missouri River.

Your committee find that the section of country proposed to be traversed by this railroad is for the greater portion of its line entirely unsettled, and in fact very little population on any portion of its line. That the construction of its road as proposed will open up to settlement a very large and rich section of country, that otherwise, for want of means of transportation, will remain for many years unoccupied.

This bill, in addition to the right of way of 200 feet, merely grants 160 acres for each ten miles of road, which becomes especially valuable to the railroad company for depot and town-site purposes, as also the five sections for general terminal and town-site purposes. Without this grant for such purposes the company, investing its money in the construction of its railroad and in developing and opening up to settlement this large extent of country, is liable to be wronged and preyed upon by town-site speculators, who, having the plans of the company in advance, secure these important sites, and are thereby enabled to speculate at the expense of other people's money and enterprise.

Your committee think it but just that the railroad company should be protected to this extent, and would therefore recommend the passage of the bill.



## INDEMNITY LANDS TO WISCONSIN.

Aug. 6, 1850.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

WASHBURN, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 1141.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 1141), entitled "A bill to authorize the State of Wisconsin to select indemnity lands for sixteenth sections and swamp and overflowed lands included within Indian reservations," have considered the same, and respectfully recommend its passage.

In support of their report the committee submit that by acts of Congress approved August 6, 1846, and May 29, 1848, the United States granted to the State of Wisconsin all sections of land numbered 16 in each township, within the limits of said State, for school purposes; and an act of Congress approved September 28, 1850, granted to said State the unsold swamp and overflowed lands situated therein. Subsequent to the grants aforesaid, the government, under the provisions of a treaty dated September 13, 1854, set aside certain reservations for the benefit of the Chippewa Indians of Lake Superior, which reservations include sections 16, and also lands which have been returned by the surveyor-general as swamp-lands, and now occupied by said Indians. There is no question as to the right of the State in and to these lands so included, and as the government cannot deprive the Indians of the same without violating its treaty obligations, it is the opinion of the Secretary of the Interior, as expressed in a letter addressed to Hon. Thad. C. Pound, dated May 31, 1878, herewith presented, and of your committee, that the State of Wisconsin is justly entitled to other lands in lieu of all lands so illegally covered by these reservations. This bill seeks to indemnify the State of Wisconsin by authorizing the selection of an equal amount of the public lands within said State. Being in harmony with the rulings and recommendations of the Interior Department, and the action of Congress in similar cases, its passage is recommended. This report is accompanied with Mis. Doc. 60, second session of the 45th Congress.

[H. Mis. Doc. No. 60, 45th Congress, 2d session.]

Transmitted from the Secretary of the Interior to Hon. T. C. Pound, House of Representatives, transmitting certain papers relative to the claim of the State of Wisconsin for certain lands included in Indian reservations, and recommending legislation thereon.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D. C., May 31, 1878.

Sir: I am in receipt of your letter of this date, requesting to be informed of the amount taken on the list of lands submitted to my predecessor for approval August 29, 1878, and in reply I have the honor to inform you that, under date of August 29, 1876,

the Commissioner of the General Land Office submitted for the approval of my predecessor a list of lands, containing 19,778.33 acres, inuring to the State of Wisconsin under the swamp-grant of September 28, 1850. These lands are located within the limits of the Lac de Flambeau Indian Reservation, made under the provisions of the treaty with the Chippewa Indians of Lake Superior and the Mississippi, dated September 30, 1854.

On April 28, 1875, the Acting Secretary of the Interior decided that the right of the State to the swamp-lands became vested at the date of the grant, September 28, 1850, and that it could not be divested by the subsequent treaty of September 30, 1854 (copy of decision inclosed, marked A). No action upon the list submitted was taken by my predecessor. In view of the fact that some of these lands have been occupied for many years by the Indians, and are valuable to them (as shown by letter of the Acting Commissioner of Indian Affairs, dated October 13, 1875, addressed to my predecessor—copy inclosed, marked B), and in view of the fact that, should the evidence of title be transferred to the State, and the lands be purchased from her, conflicts and trouble would probably arise between said purchasers and the Indians, I have also declined, as yet, to approve said list, although urged to take action in the premises by the governor of the State both by letter and in person. My object in delaying the approval of the list was to allow Congress to take some action by which the interests of the Indians, the United States, and the State of Wisconsin might be protected.

The remarks in relation to lands within the Lac de Flambeau Reservation apply with equal force to the lands within the limits of the other reservations, viz. for the Lac Courte Oreille band, La Pointe band, and the Red Cliff band, made under the provisions of the treaty of September 30, 1854. In my opinion, it would be both unwise and unjust to attempt to deprive the Indians of the lands they have occupied for years. It is also desirable that the government have exclusive control of all the lands within the Indian reservations; or, in other words, that the title of no portion of lands within said reservations be in the State of Wisconsin. The reasons why the government should have exclusive control of its reservations are too apparent to require explanation or argument. I inclose a copy of a bill, which, should it become a law, will, in my opinion, protect the rights of the Indians under the treaty, give to the government the control of the reservations, and at the same time give to the State of Wisconsin full indemnity for all the lands relinquished by her. This proposition meets with the approval of the Commissioners of the General Land Office and of Indian Affairs, and I respectfully urge that action be taken by Congress in order that this question may be properly disposed of by this department.

Very respectfully,

C. SCHURZ,  
Secretary.

Hon. T. C. POUND,  
House of Representatives.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, D. C., May 15, 1875.

SIR: In reply to your letter of the 6th ultimo, calling for a list of the lands allotted in severalty to members of the different tribes occupying reservations in Wisconsin, and any information in my possession relative to the occupancy of land by Indians within the reservations not allotted in severalty, I have the honor to report that under treaty of September 30, 1854 (10 Stats., 1109), there have been set apart and withheld from sale for the Chippewas of Lake Superior lands as follows:

	Acres
For the Lac Courte Oreille band .....	69,136
For the Lac de Flambeau band .....	69,224
For the La Pointe band .....	124,377
For the Red Cliff band .....	13,983

Making a total area of..... 277,266

It was further provided that the President might assign to each head of a family, or single person over 21 years of age, 80 acres of land for his or their separate use, and might, at his discretion, as fast as the occupants became capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he might see fit to impose; that he might make rules and regulations respecting the disposition of the lands in case of the death of the head of a family, or single person, occupying the same, or in case of its abandonment by them, &c.

The stipulations by which the United States agreed to make these reservations were made in consideration of certain cessions of land set forth in article 1 of said treaty.

Wisconsin was admitted into the Union as a State by act approved May 29, 1848 (9 Stats., 178). By act of September 28, 1850 (9 Stats., 519), entitled "An act to enable

the State of Arkansas and other States to reclaim the swamp-lands within their limits," Wisconsin was granted all the swamp and overflowed lands therein which remained un sold at date of the act.

The said Indian reservations were made subsequent to the swamp-grant to said State, by virtue of said treaty of 1854, and hence it is apparent that all the swamp-lands within the boundaries of these reservations belong to the State; therefore the State should in some way be reimbursed for the lands so taken, or her swamp-grant made good and available by granting her the right to make lien selections for such swamp-lands as are officially ascertained to lie within said Indian reservations..

The Bad River Indians (of the La Pointe band) have made selections, and about forty-six patents have been issued to them.

That part of said band of which Buffalo was chief, residing on the Red Cliff Reservation, made individual selections, which were approved by the President February 20, 1867, and for which patents will soon issue. Other selections have been made by the same band, which have not been approved.

The Lac Courte Oreilles have also made selections, which as yet have not been approved.

I understand that the swamp-lands in question are very desirable for the Indians; that they are among their best meadow-lands, and are particularly adapted to producing wild rice, which forms a valuable source of food.

I do not deem it expedient to attempt a specific restitution of these swamp-lands, and it is obviously a matter of justice that the State should have the benefit of her grant. I therefore recommend that Congress be asked to provide by law that the State of Wisconsin be granted, through her duly-constituted authorities, the right of selecting indemnity for such swamp-lands as by the official returns of the surveyor-general are shown to belong to the State, and that her claim to said swamp-lands in place be thereupon vested in the government, and that such right of selection shall be confined to those public lands to which no prior right, under any law of the United States, shall have attached at the date of such selection.

The State is also entitled to certain school-lands, which in the same manner have been embraced in said reservations, and concerning them I recommend a like remedy.

I also suggest that in Minnesota and Oregon the situation is the same, so far as said grants are concerned. Certain reservations have been made including swamp and school land, and I recommend legislation of the character suggested above to relieve those States and discharge the obligations of the government.

Very respectfully, your obedient servant,

E. A. HAYT,  
*Commissioner.*

Hon. SECRETARY OF THE INTERIOR.

A.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D. C., April 28, 1875.*

SIR: I have examined the appeal of the State of Wisconsin from your decision of May 20, 1874, refusing to recognize the claim of the State to the swamp-lands included in the Indian reservations created by the second article of the treaty of September 30, 1854 (10 Stats., 1109).

As I understand your statement, the lands included in said reservations were the property, in fee-simple, of the United States, on the 28th day of September, 1850, the date of the swamp-land grant.

Wisconsin had been admitted into the Union as a State on the 29th of May, 1848.

The grant of September 28, 1850, was a present grant, and the State of Wisconsin acquired title to all the swamp-lands in said tracts at that date (Railroad Co. *vs.* Smith, 9 Wall., 95), and that title could not be, and was not, divested by subsequent treaty of 1854.

I reverse your decision; and herewith return the papers transmitted with your letter of July 8, 1874.

Very respectfully,

W. H. SMITH,  
*Acting Secretary.*

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

## INDEMNITY LANDS TO WISCONSIN.

B.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, D. C., October 13, 1875.*

SIR: This office is in receipt, from the Commissioner of the General Land Office, of a copy of a decision of the honorable Acting Secretary of the Interior, dated April 2, 1875, overruling Land Office decision of May 20, 1874, whereby the latter officer refused to recognize the claim of the State of Wisconsin to the swamp-lands included within the limits of certain Indian reservations established by the second article of the treaty with the Chippewa Indians of Lake Superior, concluded September 30, 1854.

The treaty of 1854, after reserving certain lands for Indian purposes, makes provision for an allotment of the same in severalty to members of the different bands of Indians occupying the same.

An allotment has already been made to members of the La Pointe band, occupying the La Pointe or Bad River Reservation.

An examination of these allotments, and a comparison with the books of the General Land Office, exhibit the fact that in some twenty-five cases either a part or the whole of such allotments are composed of the lands designated as swamp-lands, and which come within the scope of department decision above referred to. These lands comprise the very choicest tracts upon the reservation in question. The Indians gather the major part of their wild rice and cranberries from a portion of the same, and have their gardens upon the remainder. They have lived upon and cultivated these tracts, in many cases, for twenty years, and their houses and all their other improvements are located upon them. They have been encouraged to believe that these lands belonged to them, and that, when allotments should be made in severalty, they would receive patents therefor. Should they now be deprived of their lands and improvements, it would be a very great hardship, and one that should be prevented if possible.

I therefore have the honor, respectfully, to recommend that the Commissioner of the General Land Office be directed, until further instructions, not to certify to the State of Wisconsin as swamp-lands any of the tracts comprised within the limits of any of the reservations set apart by the treaty aforesaid, and that legislation be asked of Congress giving to the State of Wisconsin an equal quantity of public lands in lieu thereof, located elsewhere within the limits of said State, or that provision be made for otherwise indemnifying the State.

Very respectfully, your obedient servant,

H. B. CLUM,  
*Acting Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

THOMAS H. REEVES.

APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BENNETT, from the Committee on the Public Lands, submitted the following

R E P O R T :

[To accompany bill H. R. 954.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 954) for the relief of Thomas H. Reeves, have duly considered the same, and report it back to the House with the recommendation that it do pass.

The following letter bearing on the subject is submitted :

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., April 4, 1879.*

SIR: I have had the honor to receive from you, under date of 2d instant, a letter, addressed to you by Thomas H. Reeves, Neosho, Mo., March 26, 1879, in which is inclosed two letters from this office to Mr. Reeves, dated November 20, 1878, and February 18, 1879, relative to the location of military land warrant No. 79333, 40 acres, act 1850, which are herewith returned.

This warrant was assigned by the warrantee, Margaret Box, March 21, 1857, to Isham Blankenship. July 13, 1857, it was located at Springfield, Mo., upon the NW.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$  27, 24, 34, by Thomas Vaughn.

There is no transfer of the warrant from Blankenship to Vaughn, nor is there any evidence with the papers that Vaughn was authorized to locate said warrant, either in his own name or that of the assignee.

More than twenty-one years have elapsed since the assignment to Blankenship and the location by Vaughn were made, and no objections to either have been filed in this office, nor is there any adverse claim to the tract shown by our records.

The district officers committed an error in permitting Mr. Vaughn to locate said warrant in his name without a transfer from Blankenship authorizing him so to do.

Mr. Reeves has filed in this office a certificate, under seal, from the recorder of deeds of Newton County, Missouri, showing a transfer of the land from Thomas Vaughn to John Marshall, June 9, 1860, and from John Marshall and wife to Thomas H. Reeves, October 27, 1871.

You request that you be informed "if there is no way to relieve Mr. Reeves but by act of Congress or payment of fifty dollars."

This office cannot extend any relief to Mr. Reeves other than by permitting him to substitute a warrant duly assigned to Thomas Vaughn, or by paying for the land \$50 in cash; when this is done the patent would issue in name of said Thomas Vaughn, and the warrant 79333 be returned to Mr. Reeves.

I cannot see any impropriety in Congress passing an act for the relief of Mr. Reeves, as he is evidently an innocent purchaser in good faith.

Very respectfully,

J. A. WILLIAMSON,  
*Commissioner.*

Hon. JAMES R. WADDILL,  
*House of Representatives.*





## MILITARY RESERVATION AT FORT SMITH, ARK.

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APRIL 6, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. BENNETT, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 964.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 964) entitled "A bill to provide for the reappraisement and sale of the abandoned military reservation at Fort Smith, Ark.," having duly considered the same, report it back to the House and recommend that section 8 be stricken out, and when so amended that it do pass.

It is found that by War Department letter of March 20, 1871, this reservation was transferred to the custody of the Interior Department for disposition in accordance with the terms and provisions of the act approved February 24, 1871, entitled "An act to provide for the disposition of useless military reservations."

By executive order dated May 22, 1871, so much of the reservation as was occupied by a national cemetery was reserved from sale and restored to the custody of the War Department, and by executive order dated December 3, 1875, additional land was reserved for the use, and to form a part, of said national cemetery. This bill in nowise interferes with the land so reserved for a national cemetery. The said act approved February 24, 1871, provided for an appraisement and sale to the highest bidder, and at not less than the appraised value, nor at less than \$1.25 per acre. The appraisement thereunder was so high that no sale of any part thereof has been or will likely be made within any reasonable time.

The government at present derives no benefit from said reservation, or any part thereof, except that portion withheld from sale by the provisions of this bill. The garrison buildings remaining within the walls of the fort are now serving the government a useful purpose, the United States district court for the western district of Arkansas being held therein. Ample grounds are within these walls for any other and far more extended buildings than the government will ever consent to construct or need at that point, no matter what progress may be made in the town or surrounding country. All this is withheld by the provisions of this bill. Besides this, so much as is included between Ozark and Washington streets of said town, if extended, is withheld, and upon it is a building at present used as an office by the judge and United States district attorney. The grounds within the walls, the grounds upon which this office is located, and the national cemetery are the permanent reservations provided for by this bill.

The bill provides that persons owning lots between Garrison avenue and the proposed new street, fronting on Garrison avenue, may be allowed

to purchase at their appraised value the grounds in their rear to the new street; that is to say, the necessary grounds to make their lots 140 feet in depth. The reservation line until recently has been uncertain, and purchases were made and buildings erected when it was believed to be elsewhere. It is thought to be just that these persons should so be allowed to purchase.

The bill provides that so much of the reservation as lies within Garrison avenue and is occupied by the wharf shall be granted to the city for and in consideration of the extension of Green street of said city, through private property to and through said reservation. This is regarded as a good and valuable consideration, as doubtless the value of the property will be greatly enhanced by the extension of said street, besides a way will thus be opened to reach directly the national cemetery. A large avenue is provided for through the entire reservation, running directly in front of the national cemetery, besides fifty-foot streets around the same.

The bill provides for safe means of appraisement, and that no sale shall be made at public auction or by private entry for a less sum than the appraised value. There are no improvements of any value upon the grounds sought to be sold, and those reserved from sale are of as much use to the government as the entire reservation, for which reason the passage of the bill is recommended when amended as above stated.

## LANDS FOR UNIVERSITY PURPOSES.

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APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. BENNETT, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 1327.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 1327) to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming, for university purposes, having duly considered the same, beg leave to submit the following report:*

The history of previous legislation shows that it has been the practice of Congress to make grants for such purposes to Territories embracing public lands.

Ohio received 69,120 acres under acts of Congress of April 21, 1792, and March 3, 1803.

Indiana received 46,080 acres under acts of March 26, 1804, and April 19, 1816.

Illinois received 46,080 acres under acts of March 26, 1804, and April 18, 1818.

Missouri received 46,080 acres under acts of February 17, 1818, and March 6, 1820.

Mississippi received 46,080 acres under acts of March 3, 1803, and February 20, 1819.

Louisiana received 46,080 acres under acts of April 21, 1806, March 3, 1811, and March 3, 1827.

Michigan received 46,080 acres under acts of May 20, 1826, and June 23, 1836.

Arkansas received 46,080 acres under acts of March 2, 1827, and June 23, 1836.

Florida received 92,160 acres under acts of March 3, 1823, and March 3, 1845.

Iowa received 46,080 acres under acts of July 20, 1840, and March 3, 1845.

Wisconsin received 92,160 acres under acts of June 12, 1838, August 6, 1846, and December 15, 1854.

California received 46,080 acres under act of March 3, 1853.

Minnesota received 82,640 acres under acts of February 19, 1851, February 26, 1857, and July 8, 1870.

Oregon received 46,080 acres under acts of February 14, 1859, and March 2, 1861.

Kansas received 46,080 acres under act of January 29, 1861.

Nevada received 46,080 acres under act of July 4, 1866.

Nebraska received 46,080 acres under act of April 19, 1864.

Colorado received 46,080 acres under act of March 3, 1875.

The committee believe such disposition of portions of the public lands to be wise and beneficial, and that such aid and encouragement should be extended to the Territories.

The public lands are being taken up and occupied with marvelous rapidity, and if the Territories named are to have any benefit from such grants, the opportunity for making the selections should be afforded them at an early day. In the opinion of the committee, next to furnishing homesteads for the people, no better use can be made of the public domain than to dedicate it to the uses and purposes of education.

No such grants having been made to the Territories named in this bill, the committee report the same back with the recommendation that it do pass.

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THOMAS F. TALBOT.

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APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BENNETT, from the Committee on the Public Lands, submitted the following

R E P O R T :

[To accompany bill H. R. 1778.]

*The Committee on the Public Lands, to whom was referred the bill for the relief of Thomas F. Talbot, respectfully submit the following report :*

It appears by the evidence that Thomas F. Talbot, prior to the survey made by the general government in conformity with the pre-emption laws, entered upon a certain tract of land in the vicinity of the town of Cheyenne, in the Territory of Wyoming ; that he erected buildings and made valuable improvements thereon ; that he has been a continued resident and remained in possession ever since his original location of the land in question. On the extension over it of the public surveys it has been found that the land thus occupied by the said Thomas F. Talbot was within the section designated as school lands and reserved from the operations of the pre-emption laws. He asks that he be allowed, as has been customary in similar cases, where pre-emptors have unintentionally located on school lands, to pay over to the receiver of the local land office the proper compensation of the land for the benefit of the public schools in said Territory.

The committee recommend that the said Thomas F. Talbot be permitted to obtain title from the United States, if, before receiving said title, he has in all respects complied with the laws of the United States relating to the pre-emption of the public lands.



## GRANT OF LANDS TO THE STATE OF NEVADA.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. BENNETT, from the Committee on the Public Lands, submitted the following

### R E P O R T :

[To accompany bill H. R. 3708.]

*The Committee on the Public Lands, to whom was referred bill H. R. 3708, being a bill to grant to the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State, having duly considered the same, respectfully submit the following report:*

On the admission of Nevada into the Union as a State, in 1864, the Federal grant of the sixteenth and thirty-sixth sections of the public lands within her borders for school purposes gave the State title to one-eighteenth of the entire area of the State, or something over 3,900,000 acres.

Unlike any other State to which similar grants have been made by the general government, the surface of Nevada is in a large part marked by sparsely timbered mountain ranges and intervening stretches of valueless desert basins and dry sage-brush valleys, susceptible of irrigation only by means of artesian wells, the few small streams within the State not affording water sufficient to irrigate the valleys through which they pass.

The sixteenth and thirty-sixth sections falling alike upon mountain and desert, and the dry sage-brush lands being unsalable, except in large tracts, for cattle ranges or experimental irrigation by artesian wells, the State has been unable to dispose of more than 70,000 acres in 15 years, with the certainty of the demand growing less from year to year hereafter. By a provision of the constitution of the State, the proceeds of the sales of these lands become a part of the irreducible school-fund of the State, and are devoted exclusively and perpetually to educational purposes. Thus far, it will be seen, the school-fund of the State has derived but little benefit from this grant of the sixteenth and thirty-sixth sections, while a burdensome property-tax is every year required in the several counties of the State for the support of their public schools.

The people of Nevada now ask that they may be permitted to exchange the 3,800,000, or more, acres still remaining unsold of the grant referred to for 2,000,000 acres of non-mineral public lands within the State, to be selected in such localities and such bodies as will be most likely to render them salable, and thus meet the aim of the general government in creating for them a serviceable school-fund.

In futherance of this request, and in anticipation of the exchange being authorized by Congress, the last legislature of Nevada enacted a law formally relinquishing the title of the State to the 3,800,000, or

more, acres remaining unsold of the sixteenth and thirty-sixth sections, and accepting in lieu thereof the 2,000,000 acres, to be selected as in this bill provided.

As your committee understand it to be the purpose of the State to attempt to reclaim the desert and sage-brush lands now asked in exchange for its school grant through the inducement of special bounties for sinking of artesian wells, and as this seems to be the only method by which purchasers can ever be found for the most of these lands, your committee recognize the justice and propriety of the proposed exchange, and therefore report the bill back with the recommendation that it do pass.





## NEW LAND DISTRICT IN NEW MEXICO.

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APRIL 6, 1880.—Laid on the table and ordered to be printed.

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Mr. BENNETT, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 3712.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3712) to establish an additional land district in the Territory of New Mexico, having duly considered the same, and in consideration of the facts and conclusions stated by the honorable Commissioner of the General Land Office in a letter which is made a part hereof, report said bill back, with the recommendation that it be indefinitely postponed.

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DEPARTMENT OF THE INTERIOR,  
*Washington, February 16, 1880.*

SIR: I transmit herewith a copy of a letter addressed to me on the 7th instant, by the Commissioner of the General Land Office, in answer to request of your committee for report on the bill (H. R. 3712) to establish an additional land district in the Territory of New Mexico.

I also inclose a diagram showing the boundaries of the proposed district, and I concur in the opinion of the Commissioner that the passage of said bill would not be in the interests of the public service.

Very respectfully, &c.,

C. SCHURZ, *Secretary.*

Hon. GEORGE L. CONVERSE,  
*Chairman Committee on the Public Lands,  
House of Representatives.*

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DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
*Washington, D. C., February 7, 1880.*

SIR: I have received from the House Committee on the Public Lands, for report, a copy of the bill (H. R. 3712) to establish an additional land district in the Territory of New Mexico.

With reference to the proposed measure, I have the honor to state that during the past year, in the entire Santa Fé land district, from which it is proposed to create the new district, only 329 entries of all kinds were made.

It also appears that Las Vegas, the point where it is proposed to locate the office of the district, is 50 miles distant from any lands subject to entry. The amount of business likely to be done in the new district is very small, and entirely insufficient to warrant me in recommending its creation.

It would be difficult to obtain the services of competent officials who, for the meager salaries they would receive, would devote their time to their official duties, and the appointment of incompetent persons who would be likely to accept the positions

would tend to create more trouble and confusion with titles than would be counterbalanced by the benefits likely to be derived by settlers from having an office established in a place more convenient of access to them.

I transmit herewith a diagram showing the boundaries of the district proposed to be created.

Very respectfully,

J. M. ARMSTRONG,  
*Acting Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

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## RELIEF OF CERTAIN PRE-EMPTION SETTLERS IN DAKOTA.

APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. BENNETT, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 3948.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3948) for the relief of certain pre-emption settlers in Dakota Territory, have duly considered the same, and report it back to the House, with the recommendation that it do pass.

In order to illustrate and make clear the purposes of this bill the committee present the history of one of the cases sought to be relieved, all the others being substantially identical.

It appears from the records of the General Land Office that one Ole Olson filed his declaratory statement, No. 820, June 10, 1875, for the southwest quarter of section 8, township 146, range 49, in said Territory, containing 160 acres, and at the proper time, viz, November 13, 1877, appeared at the local land-office at Fargo and made proof of settlement and cultivation of the tract of land above described, as required by the pre-emption law of the United States, to the satisfaction of the local officers, and at the same time made payment of \$200 to the receiver for the east half of said quarter section, containing 80 acres, received his receipt, No. 317, for the same, and, at the same time, made a homestead entry of the west half of said quarter section, as he had the right to do under the law. At the time of making said proof it appears by affidavits on file in the General Land Office that the local officers informed the parties that it was immaterial on which 80 they made the pre-emption cash entry.

On the 26th of July, 1878, the Commissioner of the General Land Office, after examination of the papers sent up in the case, directed the local officers to obtain and forward additional proof showing on which legal subdivision of the quarter section the claimant's residence and improvements were situated. The local officers, in compliance therewith, sent up the affidavits of the party, dated August 24, 1878, stating that his residence and principal improvements were on the 80 embraced in his homestead entry.

On the 23d day of October, 1878, the Commissioner, by letter to local officers, declared the cash pre-emption entry to be illegal for non-compliance with the pre-emption law in regard to settlement and improvement, and directed that the party be allowed, if he so desired, to relinquish his homestead entry, and when the same should be canceled, should be allowed to change his cash entry to embrace said tract and to make a homestead entry upon the land covered by his pre-emption entry,

## 2 RELIEF OF CERTAIN PRE-EMPTION SETTLERS IN DAKOTA.

provided he should be the first legal applicant; in other words, reverse the entries.

On February 13, 1879, Olsen forwarded, through officers of the local land-office, a relinquishment to the United States of his claim to the tract covered by his cash pre-emption entry, and at same time made application for repayment of the purchase-money paid therefor. February 20, 1879, the Commissioner, by letter to local officers, canceled said cash entry.

The claim for refunding the purchase money was adjusted and approved by the Commissioner and submitted to the Secretary of the Interior for his approval. On the 29th July, 1879, the Secretary returned the papers without his approval, and rejected the claim for repayment for the reason, as he states, that no obstacle existed to the confirmation of the title on the part of the United States, and did not therefore come within the provisions of section 2362, Revised Statutes. (See report of Commissioner of the General Land Office for 1879, page 177.)

Respecting the case of Olsen, the other cases sought to be covered by the provisions of this bill, as before stated, being identical, the committee find that he made the pre-emption settlement on 160 acres of land in good faith, appeared at the local land-office and submitted his proofs showing, to the satisfaction of the local officers, the agents of the government, a full compliance with the law, paid for 80 acres of the same, and transmitted the remaining 80 to a homestead entry under the law. The officers and agents of the government, on the proofs submitted, sold the land, received the money from the settler for it, and issued his receipt therefor.

By section 2362, above referred to—

The Secretary of the Interior is authorized, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States so that *from any cause* the sale cannot be confirmed, to pay to the purchaser, or to his legal representatives or assignees, the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated.

A sale of the land in this case was unquestionably made and subsequently declared illegal by the Commissioner of the General Land Office, and consequently cannot be confirmed. It was therefore "*an erroneous sale,*" and by the provisions of the statute the money so paid should be refunded. It is not presumed that the government proposes to keep the money and land both. The Commissioner of the General Land Office, in his report for 1879, page 174, states, in connection with this subject, that—

Repayment claims are not in the nature of unascertained or questionable demands upon the Treasury. They are claims not for the money of the United States, but for money improperly in the custody of the United States.

Under the construction placed upon the statute above cited, these parties, who have paid their money into the United States Treasury and lost their lands, have no remedy, and come to Congress for simple justice, which this bill proposes to grant them.

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### EXHIBIT A.

We, Lewis Olson and Jonas Johnson, of Traill County, Dakota Territory, do solemnly swear that we have known Ole Olson, of said county and Territory, for three years last past; that he is a single man, of the age of twenty-one years, and has declared his intention to become a citizen of the United States, and is an inhabitant of the S. W.  $\frac{1}{4}$  sec. 28, T. 146, R. 491, and that no other person resided upon said land entitled to right of pre-emption; that the said Ole Olson entered upon and made set-

RELIEF OF CERTAIN PRE-EMPTION SETTLERS IN DAKOTA. 3

tlement in person on the said land since the 4th day of September, 1841, to wit, on the 2d day of June, 1875; that since said settlement he has built a house of logs, 16 by 14 feet, one door, one window, turf roof, no floor, and has lived in said house and made it his exclusive home from the 2d day of June, 1875, till the present time; that he did not remove from his own land within the Territory of Dakota to make the settlement above referred to; and that he has since said settlement plowed and cultivated about 40 acres of said land, fenced 30 acres, and built a granary 8 by 16 feet.

LEWIS OLSON.  
JONAS JOHNSON.

W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  28, 146, 49, commuted to homestead entry No. 748.

I, Thos. M. Pugh, receiver, do hereby certify that the above affidavit was taken and subscribed before me this 13th November, 1877.

THOS. M. PUGH, *Receiver*.

We certify that Lewis Olson and Jonas Johnson, whose names are subscribed to the foregoing affidavit, are persons of respectability.

C. B. JOHNSON, *Register*.  
THOS. M. PUGH, *Receiver*.

The usual affidavit of party as to his right to make pre-emption entry is on back of this proof.

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EXHIBIT B.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., July 26, 1878.

GENTLEMEN: The proof in cash entry No. 317, by Ole Olson, with pre-emption affidavit attached, is herewith returned for signature of the receiver to the *jurat* of the affidavit aforesaid. You will also require of claimant additional proof showing on which legal subdivision of the S. W.  $\frac{1}{4}$  28, 146, 49, are his residence and valuable improvements.

Promptly report, referring to this letter as "G."

Very respectfully,

U. J. BAXTER,  
*Acting Commissioner*.

REGISTER AND RECEIVER,  
Fargo, Dak.

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EXHIBIT C.

I, Ole Olson, of Traill County, Dakota Territory, do solemnly swear that the legal subdivisions of the S. W.  $\frac{1}{4}$  sec. 28, T. 146, R. 49, on which my improvements have been made are as follows: 20 acres of land in crops on the N. E.  $\frac{1}{4}$ , and 40 acres of land in crops and now breaking, and a house on the N. W.  $\frac{1}{4}$  of said S. W.  $\frac{1}{4}$  of sec. 28.

OLE OLSON.

Attest:

ASA SARGEANT.  
ASA H. MORGAN.

Sworn to and subscribed this 24th day of August, 1878, before me.

[SEAL.]

ASA SARGEANT, *Notary Public*.

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EXHIBIT D.

REGISTER AND RECEIVER,  
Fargo, Dak.:

GENTLEMEN: I am in receipt of the register's letter of October 18, 1878, transmitting the affidavit called for by this office August 19, 1878, in case of pre-emption cash entry No. 317, by Ole Olson.

#### 4 RELIEF OF CERTAIN PRE-EMPTION SETTLERS IN DAKOTA.

Mr. Olson filed D. S. 820, June 10, 1875, for S. W.  $\frac{1}{4}$  28, 146, 49, and on November 13, 1877, made pre-emption proof therefor, entering the E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  by cash, and making homestead entry, No. 748, for W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  58, 146, 49.

Mr. Olson's affidavit, under date of August 24, 1878, shows that at time of making said entries his residence and improvements were upon the W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  28, 146, 49.

You will please advise said claimant that his said cash entry, No. 317, is held by this office to be illegal for non-compliance with the requirements of the pre-emption law as to residence, and instruct him that if he so desires he may relinquish his homestead entry for W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  sec. 28, 146, 49, and when the same shall have been canceled by this office he will be allowed to amend his cash entry to embrace said tract and to make a homestead entry upon the land now embraced in his pre-emption cash entry, provided he shall be the first legal applicant.

Very respectfully,

J. A. WILLIAMSON,  
*Commissioner.*

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#### EXHIBIT E.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
February 20, 1879.

GENTLEMEN: This office is in receipt of receiver's letter of 13th instant forwarding affidavit and application of Ole Olson, whereby he relinquishes all claim to the land covered by his cash entry No. 317, viz, E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  28, 146, 49, and requests that the purchase money paid therefor be refunded.

Said entry was declared illegal by letter "G" of October 23, 1878, and is this day canceled. The application for repayment will form the subject of another communication.

Very respectfully,

J. A. WILLIAMSON,  
*Commissioner.*

REGISTER AND RECEIVER,  
 Fargo, Dak.

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#### EXHIBIT F.

DEPARTMENT OF THE INTERIOR,  
Washington, D. C., July 29, 1879.

SIR: I herewith return without my approval the application of Ole Olson for the repayment of the purchase money paid for E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  sec. 28, T. 146, R. 49 west, Fargo, Dak.

You state that this entry was canceled by your officer for the reason that the party failed to comply with the pre-emption law as to residence. At the date of Olson's entry, the United States had full title to the land, it was subject to sale, and no obstacle existed to the confirmation of title so far as the government was concerned.

The application is made under the provisions of section 2262 of the Revised Statutes, which is as follows:

"The Secretary of the Interior is authorized, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States, so that from any cause the sale cannot be confirmed, to repay to the purchaser or his legal representatives or assignees the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated."

In view of the practice which appears to have heretofore prevailed in your office and in this department, I deem it proper to consider the question of the correct construction of the statute.

The first act of Congress authorizing the payment of purchase money was approved January 12, 1825 (4 Stat., 80), and is as follows:

"That every person, or the legal representative of every person, who is, or may be, a purchaser of a tract of land from the United States, the purchase whereof is or may be void by reason of a prior sale thereof by the United States, or by the confirmation or other legal establishment of a prior British, French, or Spanish grant thereof, or for want of title thereto in the United States from any other cause whatsoever, shall be entitled to repayment of any sum or sums of money paid for or on account of such tract of land, on making proof to the satisfaction of the Secretary of the Treasury that

the same was erroneously sold in the manner aforesaid by the United States, who is hereby authorized and required to repay such sum or sums of money paid as aforesaid."

It will be observed that under this statute the purchase money could only be refunded where the purchase of the land was void by reason of a prior sale thereof by the United States or by the confirmation or other legal establishment of a prior British, French, or Spanish grant thereof, or for want of title thereto in the United States from any other cause whatsoever.

This was the statute under which the Land Department operated for a period of thirty-four years. During this time Congress granted vast portions of the public domain to aid in the construction of railroads and other works of internal improvements. In many instances a considerable period of time would elapse before the lands thus granted were identified; in many instances not only the lands granted, but indemnity lands, were withdrawn by proper authority from settlement and sale. Lands were also reserved for Indians, military, and town-site purposes. In many of the cases above cited the United States retained the full title to the lands; they were, however, withdrawn from sale by competent authority. Experience, however, demonstrated that, notwithstanding such withdrawal, tracts were frequently but erroneously sold by the local officers. In view of these facts Congress passed an act, which was approved February 28, 1859, amending the act of January 12, 1825 (11 Stat., 387). This statute is as follows:

"That the act of Congress authorizing the repayment for lands erroneously sold by the United States, approved January 12, 1825, be, and the same is hereby, amended, so as to authorize the Secretary of the Interior, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States, so that from any cause whatever the sale cannot be confirmed, to repay to the purchaser or purchasers, or to the legal representatives or assignees of the purchaser or purchasers thereof, the sum or sums of money which may have been paid therefor, out of any money in the Treasury not otherwise appropriated."

It will be observed that under this act, when the land had been erroneously sold, so that from any cause whatever the sale could not be confirmed, the money should be repaid. This statute, however, was an amendment and enlargement of the original act, rendered necessary by the increased number of obstacles which had been raised to the confirmation of title to lands erroneously sold by the agents of the government. There is nothing, however, which for a moment justifies the supposition that it was the intention of Congress to change the spirit or intent of the original act, viz, that the obstacle to the confirmation of title must be one existing on the part of the government, and not an obstacle caused by the laches or non-compliance with the law or the fraudulent act of the purchaser.

Should the latter construction prevail, it would, in effect, be the offering of a premium for the fraudulent purchase of land. Under such a construction, should a party be detected in an attempt to illegally obtain title to land, he would simply request the return of the money paid, and thus be subjected to no loss or inconvenience. A construction of a statute which would lead to such a practice and to such results would be contrary both to good sense and to a sound public policy.

The only safe and correct rule to follow is the one expressly indicated in the original statute, and clearly indicated by the history of the transactions of the Land Department prior to the passage of the amended act, and in the terms of the said amended act. Section 2362 of the Revised Statutes is but the embodiment of the act of February 28, 1859.

In my letter of the 1st instant, rejecting the application of Christopher Bradley, it was expressly stated that where the obstacle to confirmation of title did not exist on the part of the government, but was the result of laches or an illegal act on the part of the applicant, the purchase money could not be refunded. That principle is herein affirmed, and you are instructed to be governed accordingly in the adjustment of future applications for the return of purchase money.

Very respectfully,

A. BELL,  
*Acting Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

H. Rep. 743—2





**MILITARY RESERVATION OF FORT RANDALL.**

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**APRIL 6, 1890.**—Referred to the House Calendar and ordered to be printed.

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**Mr. BENNETT**, from the Committee on the Public Lands, submitted the following

**R E P O R T :**

[To accompany bill H. R. 4575. ]

The Committee on the Public Lands, to whom was referred bill H. R. 4575, being "a bill abolishing all that portion of the military reservation of Fort Randall, Territory of Dakota, lying east and north of the Missouri River," having duly considered the same, report it back to the House with the recommendation that it do pass.





## RESERVATION AND SALE OF TOWN SITES ON THE PUBLIC LANDS.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. BENNETT, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 5034.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 5034) providing for the reservation and sale of town sites on the public lands, having duly considered the same, beg leave to submit the following report:*

The committee recommends the following amendments:

In section three, after the word "court," in the fifth line, insert *or of any court of record.*

In section five, in seventh line, strike out the word "six" and insert the word *sixty.*

Strike out all of section six.

In section seven, after the word "heretofore," in the second line, insert *or hereafter.*

Strike out the first nine lines of section 8 and insert in lieu thereof the following: *That in the patent to be issued by the United States for any town site on mineral lands under this act, whether the same be veins, deposits, or placer claims, there shall be recognized the prior under-ground and surface rights, if any, recognized by local authority or law, of persons owning or in possession of such mineral lands, together with such use thereof as may be reasonably necessary for the purposes of working such mineral claim; and all mineral veins and deposits, not including placer, shall be reserved to the United States, with the right to dispose of the same in such way as shall not be in conflict with the surface rights of the owners thereof.*

At the end of line 19 of said section 8 insert the following: *and if the same shall be for a placer claim, the following shall be added: Provided, That such occupation, possession, and enjoyment shall not be construed to exclude the grantees herein from such reasonable use of the surface as may be held and deemed necessary for the purposes of working said claim.*

Strike out all after the word "mine" in the twenty-second line of said section 8 down to the word "and" in the twenty-fourth line, and insert the following: *in veins or deposits of gold, silver, cinnabar, or copper, or to the surface rights reasonably necessary for the purpose of working any valid placer claim or possession recognized under local authority or law, held or possessed prior to the occupancy of said premises as a town site.*

Strike out all after the word "in" in the twenty-sixth line of said section 8 to the word "so" in the twenty-seventh line, and insert *the act providing for the reservation and sale of town sites on the public lands, approved* —, 1880.

## 2 RESERVATION AND SALE OF TOWN SITES ON PUBLIC LANDS.

In section 14, after the word "sites" in the second line, insert, and *mining claims.*

At the end of section 15 add the following: *Provided, That all proceedings instituted thereunder, and all applications now pending, shall be prosecuted and conducted to a final determination under the provisions of this act.*

The provisions of this bill are in substance the same as chapter 8 of Title XXXII of the Revised Statutes of the United States, excepting that portion relating to the location of town sites on mineral lands. It having been quite recently decided by the Interior Department that such locations cannot be made on mineral lands known as placer, and several towns of importance having been located and built on such lands, some additional legislation is deemed of urgent and pressing necessity to meet the exigency arising from the decision referred to.

Under the former ruling and practice patents were issued for mining claims and for town sites upon the same lands, each patent containing their respective reservations or exceptions in substance, as is provided in section 8 of this act; and there are now pending many applications for mining claims and town sites which were located while the former rulings prevailed, and with reference to the same the rights of both mining claimant and town-site occupant being respectively recognized by the parties in interest; and the passage of this bill will allow such applications to be perfected in such manner as will protect the equitable rights of all parties.

The history of all mining countries shows that the discovery of mineral and the location of mining claims, whether placer or lodes, precede the location and building of towns.

Precious metals are usually found in mountainous, hilly, or broken country, where the ravines and gulches are narrow. Placer mining is confined to the gulches, while the veins, lodes, and deposits exist in the hills.

When the discovery of gold is made excitement runs high, and all the gulches, where there is any prospect or possibility of being paying ground, are speedily taken up as placer grounds. It frequently occurs that many of the claims so taken, while they will produce colors, will not pay for working; and if the gold were confined to placer ground only, it would in a short time be worked out or abandoned. It is the discovery of gold or silver in quartz rock in place or deposits that gives to a mining country permanency as such.

The working of lodes or veins requires the investment of large amounts of money in the construction of mills, costly machinery, &c.; in the employment of a great number of men. This great industry gives rise to the building of towns and cities. These cannot be built on the tops of mountains or on rough or inaccessible hills, but must be located in the ravines or gulches, which, perhaps, before the necessities for cities or towns arose, may have been located, claimed, and occupied as placer claims. The claims may have been worked out or they may have proved barren; still the right exists in the owner, and under the decision referred to no town site can be located thereon, or rights to town property acquired as against the placer claimant or occupant.

These claims are taken up for the mineral they contain, and when worked out or found barren of mineral are abandoned; and applications for patents are seldom made except where towns have been built. The provisions of this bill are intended to carefully guard the rights of the owners of town property situated on placer grounds on the one hand, and the prior rights of the placer claimants on the other. While it gives

### RESERVATION AND SALE OF TOWN SITES ON PUBLIC LANDS. 3

to the town-property owner only the right to the surface, it protects the miner in the working of his claim, with such use of the surface as may be reasonably necessary in prosecuting his work.

While this bill provides for the location of town sites on placer grounds subsequent to the location of placer claims, it prevents the location of placer claims on grounds previously occupied for town-site purposes.

The committee finds that large towns have grown up on mineral lands, portions of which have been located as placer claims; and the existence of such towns, with their costly improvements, have made the ground very valuable.

Under the recent ruling of the department the owners of town lots, with all the improvements they have put upon them, are unable to procure any title to the same, and are at the mercy of the placer claimants when they obtain their patents without any reservation of the rights of the town-site occupants, which must necessarily work great injustice, when it is remembered that many of these towns were located and built up with the knowledge and consent, actual or implied, of the placer claimants, and in some instances where the placer claims were located after the rights of the town-site occupants had accrued.

The committee recommend the adoption of the amendments as above set out, and when so amended that the bill do pass.





## PALATKA MILITARY RESERVATION IN FLORIDA.

APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. HULL, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany bill H. R. 4849.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 4849) to confirm certain entries and warrant locations in the former Palatka military reservation, beg leave to report:*

That they find that this tract of land, known as the Palatka military reservation, was reserved for military purposes by an order of the President, February 19, 1841. Some time in 1866 a large portion of said reservation was selected by the State as swamp and overflowed land, under act of September 28, 1850. On the 20th of February, 1857, the Secretary of War having no further use for the land embraced in the said reservation relinquished the same, and they, so far as the reservation was concerned, again became public lands. The General Land Office, on the 13th of July, 1860, rejected the swamp selections made on lands within the limits of said reservation, on the ground that said lands were not subject to such selections at the date they were made, the President's order reserving these lands still being in force; hence, as the lands were considered public, and subject to entry under existing laws, since the rejection of the State selections, a considerable number of entries have been made upon said lands. Homestead entries have been allowed on said lands since 1866, until very recently, when, under decision of the honorable Secretary of the Interior, dated May 2, 1879, in the case of Illinois claiming certain lands within the six-miles limit of the grant to the Illinois Central Railroad Company, the General Land Office decided that the selections made by the State of Florida within said reservation were confirmed by the act of March 3, 1857, to the State, or, in other words, the act of March 3, 1857, was a grant *de novo*, notwithstanding the fact that the lands were in a state of reservation on the date of selection, and subsequently rejected.

Therefore, all the lands selected by the State as swamp lands within said reservation, except those patented to individuals, a number of cash and homestead entries which have been suspended awaiting action thereon, have been patented to the State, and the district officers have been instructed to retain all the patents undelivered remaining in the district office that fall within this reservation. All the cash and homestead entries now suspended in the Land Office will be canceled as soon as reached in the regular order.

Your committee, therefore, in consideration of these settlers having in good faith entered these lands and having for years been in peaceful possession and occupation thereof, and having made valuable improvements thereon, relying upon the government for protection as to titles, believe that these settlers are entitled to the relief granted by this bill, and recommend that it be passed.

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ISAAC S. LYON.

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APRIL 6, 1880.—Laid on the table and ordered to be printed.

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Mr. HULL, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 2315.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 2315) for the relief of Isaac S. Lyon, beg leave to report:*

That they find that military bounty-land warrant No. 54123, 160 acres, act of 1855, was located with an assignment from one Blackman to Isaac S. Lyon, in 1866, and the records show that the location was canceled April 21, 1873, of which fact Mr. Lyon was notified and advised that the warrant would be returned to him upon surrender of the certificate of location to the General Land-Office, which does not appear to have been complied with.

That in August, 1873, the warrant was sent to the local land-office at Traverse City for delivery to the locator, upon the surrender of the duplicate certificate of location. The records show that said land-warrant was relocated at San Francisco, Cal., December, 1875, and patent issued on said location July, 1878, Mr. Blackman having assigned said warrant November, 1875, and the acknowledgment made before a notary public of Grand Traverse City, Mich.

The warrant having been properly assigned, relocated, and the location patented, your committee consider it a matter of judicial proceeding between the parties claiming, and recommend that the bill be not passed.



ALEXANDER GRAHAM.

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APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. POEHLER, from the Committee on Indian Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 3938.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3938) for the relief of Alexander Graham, have had the same under consideration, and report it with the recommendation that it pass.

The bill provides for the payment to Alexander Graham of \$125 for a horse stolen by Indians, supposed to be Kiowas or Comanches. The facts are established by the sworn statement of claimant, and three other witnesses, and the payment recommended by the Secretary of the Interior. The Indians in council admit the probabilities of the stealing by their young men, as they were in the neighborhood at the time.



ABBIE SHARP.

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APRIL 6, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. POEHLER, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5631.]

*The Committee on Indian Affairs, to whom was referred the petition of Abbie Sharp, have had the same under consideration, and respectfully report:*

The petition sets forth that the petitioner was captured and her family killed by the Sioux Indians, at Spirit Lake, in the State of Iowa, on the 8th day of March, A. D. 1857; that she remained in captivity until the 23d day of June, A. D. 1857, when she was ransomed by the citizens of the then Territory of Minnesota by the payment of a sum of money; that while in captivity she endured great hardship and exposure, and that in consequence thereof she is now unable to support herself, and that she is in great need.

The statements contained in the petition are fully substantiated by the records in the department, and the committee therefore report back the petition favorably, and recommend the passage of the accompanying bill.



DANIEL S. McDOUGALL AND CHARLES S. WILDER.

APRIL 6, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. DEERING, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5632.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 1193) for the relief of Daniel S. McDougall, having had the same under consideration, would respectfully report as follows:*

The records of the Interior Department and other evidence submitted to the committee show the following facts:

By the second article of the Shawnee treaty of May 10, 1854 (10 Stat., p. 1053), the United States ceded to said Indians 200,000 acres of land in Kansas. A portion of these lands was to be set aside for school and church purposes; a portion was allotted in severalty to 697 persons of the tribe; other portions for other specified purposes; and the residue was "to be set aside in one body, in compact form, under the direction of the President," out of which all absentee Shawnee Indians, who should return within five years from the proclamation of the treaty (November 2, 1854), should be entitled to an allotment of 200 acres each, the balance remaining at the expiration of said five years to be sold for the benefit of said tribe.

The ninth article of said treaty authorized Congress to provide for the issuing of patents to such Shawnees as made separate selections under article 2 of the treaty and act of March 3, 1859 (11 Stat., p. 430), and Congress conferred this power upon the Secretary of the Interior.

Most of the lands were disposed of in accordance with treaty stipulations, and "the Shawnees selected, to be held in one body, in compact form, for absentees, 24,138.31 acres." These dispositions were approved of by the Secretary of the Interior, November 2, 1857, and on the 20th December, 1859, patents were issued to Shawnees to whom allotments had been made. It was subsequently discovered, however, that in some instances double allotments had been made, and in such cases selections were canceled on the records of the Interior Department.

The Hon. J. D. Cox, Secretary of the Interior, under the authority granted by act of March 3, 1869, issued certain rules and regulations to be observed in the execution of conveyances of lands held in severalty by members of the Shawnee tribe, a copy of which is now in possession of the committee.

The fifth rule provides that in cases of allotment to which the allottee was not entitled the chiefs of the Shawnee tribe may convey the lands by deed. In conformity with these rules conveyances of lands errone-

ously allotted were made by Graham Rogers and Charles Tucker, chiefs of the Shawnee Indians, and approved under the rules of the Secretary of the Interior, to Charles S. Wilder, December 15, 1869, for the consideration of \$2,000, the west half of section 8 and the south half of southwest quarter, section 5, in township 13 south, range 22 east, approved January 6, 1870, being lands double allotted to Lewis Hayes and George Seleambus; and to Daniel S. McDougall, September 30, 1869, for consideration of \$960, the east half of northeast quarter and southwest quarter of northeast quarter of section 29, township 12, range 23, approved March 19, 1870, being land double allotted to Mary Whitestone. And said Shawnees have had the benefit of the consideration above stated.

Prior to the execution of these deeds certain persons claim to have settled on the lands covered by the deeds to Wilder and McDougall, and, subsequent to their purchase claimed the same.

Wilder brought an action of ejectment against said parties in the district court of Johnson County, Kansas, to recover possession of the land. The case was tried at the April term, 1871, and judgment rendered for the plaintiff. An appeal was taken by defendant, and the case was heard and decided by the supreme court at the July term, 1871. The decision is fully reported in *Hale et al. vs. Wilder* (8 Kansas, 545).

Under this decision of the court it will be observed that inasmuch as these were not "surplus lands" they could not be conveyed under the fifth rule, to which reference has been made, and that they still belong to the Shawnee Nation, to be disposed of or retained under the direction of the government.

As has been already recited the Shawnees have received full value of these lands, and the same money invested in bonds is now to their credit and held in trust by the government. (See report of Commissioner of Indian Affairs, 1879, p. 203.)

In view of these facts, the committee are of the opinion that Wilder and McDougall are entitled to relief, and they therefore report a substitute for the bill and recommend that it pass.



## NEW YORK INDIAN LANDS IN KANSAS.

6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

HASKELL, from the Committee on Indian Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 356.]

The Committee on Indian Affairs, having had under consideration bill H. R. 356, submit the following report, together with a letter from the Commissioner of Indian Affairs, bearing date of March 29, 1878, giving history of the case as presented in this bill. Our committee, however, beg leave to differ with the honorable Commissioner of Indian Affairs as to the justice of his conclusion, when he says that—

It is safe to assume that the several tracts were in 1873 worth the full amount at which they were appraised, and that in view of the rapid development of the country and the present price of uncultivated lands in that vicinity there has at least been a depreciation of their value.

Our committee are of the opinion that there has been a marked depreciation in the value of Western lands since 1873; that the appraised value of the lands under which they are made to average \$5.02½ per acre is much above the price at which unimproved lands in Kansas are now being purchased for, and that the price named in the bill, \$3 per acre, is a fair and just valuation.

Our committee agree with the statement of the honorable Commissioner of Indian Affairs that "it is very desirable that adequate legislation be had insuring the sale of these lands and the final settlement of all questions in connection therewith," and therefore recommend the passage of the bill advised by the honorable Commissioner of Indian Affairs, changed only as to the price per acre that the occupants shall be obliged to pay.

Our committee further state that in their judgment the price that should be considered adequate for these lands should be that price the lands were worth when abandoned by the Indians nearly twenty years ago; that the act of Congress of 1873 provided for the patenting to the Indians then living upon the lands the selections they had made under the act, and that those who were at that time living on the lands received patents for their selections; that the lands now sought to be purchased are only those lands that have been abandoned by the original owners.

Our committee desire to further state that the Indians, through their agent, Hon. S. A. Cobb, of Wyandotte County, Kansas, two years ago, agreed to a uniform price of \$2.50 per acre, and that they desired

the sale of the lands. The settlers living upon the lands also signified their willingness to purchase at that price, and, therefore, your committee feel that in fixing the price at \$3 per acre they have named its maximum valuation.

We would respectfully recommend the passage of the bill with the amendments indicated.

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## NEW YORK INDIAN LANDS IN KANSAS.

APRIL 24, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. SCALES, from the Committee on Indian Affairs, submitted the following

### VIEWS OF THE MINORITY:

[To accompany bill H. R. 356.]

*The undersigned, members of the Committee on Indian Affairs, to whom was referred the bill (H. R. 356) to provide for the sale of certain New York Indian lands in Kansas, not being able to concur in the conclusions and report of the Committee, beg leave to present the following adverse report:*

They recommend the passage of the original bill without amendment, except in the thirtieth line to insert "five" for three years; and to sustain them in these conclusions they herewith present the letters of the Secretary of the Interior and Commissioner of Indian Affairs, which they have adopted as their report, and which they ask, with the accompanying papers, shall be printed.

A. M. SCALES.  
CHAS. E. HOOKER.

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DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY,  
Washington, D. C., April 8, 1878.

SIR: I have the honor to transmit herewith, for the information of the Committee on Public Lands, a copy of a report, dated the 3d instant, from the Commissioner of Indian Affairs upon the subject of proposed legislation to certain Indian lands in the State of Kansas, as indicated in the bill (H. R. 1177) "To provide for the sale of certain New York Indian lands in Kansas."

This report is made on a reference by the above-named committee of the bill in question to the Commissioner for his consideration and opinion on the 6th February last.

On the 18th of January last, Hon. D. C. Haskell, of the House of Representatives, presented a corrected copy of bill H. R. 1177 to this department for its consideration, and I transmit herewith a copy of the letter of reply, dated the 6th instant.

The objections of the Commissioner to the legislation proposed, and his views in relation to the matters presented in the bill, have the full concurrence of the department, and the papers are respectfully presented for the consideration of the committee.

Very respectfully,

C. SCHURZ, *Secretary.*

Hon. B. S. FULLER,  
*Acting Chairman Committee on Public Lands, House of Representatives.*

DEPARTMENT OF THE INTERIOR,  
Washington, D. C., April 6, 1878.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th January last, transmitting, for the consideration of the department, bill H. R. 1177, entitled "A bill for the sale of certain New York Indian lands in Kansas."

The first section of the bill in question enacts that "Those persons being heads of families or single persons over 21 years of age who have made settlement and improvement upon, and are *bona fide* claimants of and occupants of, either in person or by tenant, the lands in Kansas which were allotted to certain New York Indians, and for which certificates of allotment, dated the 14th day of September, eighteen hundred and sixty, for three hundred and twenty acres of land each, were issued to thirty-two of said Indians, shall be and hereby are, authorized and permitted to enter and purchase, at the proper land office, said lands so occupied by them, in tracts not exceeding one hundred and sixty acres, according to the government surveys, on paying therefor in lawful money of the United States at the rate of two dollars and fifty cents per acre; and patents shall issue therefor as in other cases."

By article 2 of the treaty of January 15, 1838, with the New York Indians (7 Stat., 550), the United States agreed to set aside for the New York Indians, then residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes, a tract of land situated directly west of the State of Missouri containing 1,824,000 acres; being 320 acres for each soul of said Indians, as their numbers are at present computed. Said lands were to be patented in fee simple to the tribes or bands by patent from the President of the United States in conformity with the provisions of the third section of the act of May 28, 1830 (4 Stat., 411).

The United States further agreed to set aside the sum of \$400,000 as a fund to provide for the removal of the New York Indians to the lands mentioned; which agreement was never fulfilled.

As early, however, as 1842, members of certain tribes in the State of New York and elsewhere, who thought themselves entitled to the lands under the provisions of the treaty, removed to the country west of the State of Missouri and settled therein; and from time to time others followed them until a considerable number of Indians, as will be seen from census lists on file in the Indian Bureau, were found to be occupying these lands.

From death and the hostility of the settlers who were drawn in that direction by the fertility of the soil and other advantages, all of the Indians gradually relinquished their selections until of the Indians who had removed thither from the State of New York, only 32 remained in 1860.

The lands had been surveyed in the mean while and under the instructions of the Department of the Interior, a commission was appointed to determine certain points in relation to the allotments of lands to such Indians as might be entitled to the same under the treaty prior to giving, to such as might be found entitled thereto, evidence of their right to occupancy which should secure to them the tracts upon which they were living and be such identification thereof as would settle dispute in the future; under subsequent legislation perfect title should be provided, the treaty not granting the right to issue patents to individual Indians.

In accordance with the request of the Commissioner of Indian Affairs based upon the report of the commissioners, the department approved of the selections of the 32 Indians in question, and, on the 14th of September following, certificates of allotments were issued to each of said reservees.

In 1858, petitions from settlers in Kansas were presented to the department asking that the lands be opened to settlement, and in December, 1860, the lands known as the New York Indian lands in Kansas, excepting those allotted, were accordingly opened to settlement.

But a short time elapsed, however, before troubles between the settlers and the Indians were of constant occurrence, and in 1873, when the act of February 19, 1873 (17 Stat. 466), was passed, the commissioners appointed thereunder to appraise the lands of the 32 New York Indians stated in their report that none of the allottees were to be found upon the lands. The files of the Indian Office show abundant proof that they did not voluntarily relinquish their occupation.

Be this question as it may, the act of February 19, 1873, fully recognized the right of the Indians or of their heirs to the proceeds of the lands; and applications are now before the department, which when perfected will call by legal representation for nearly all of the proceeds of the allotments of lands in question.

By the act of February 19, 1873, provision was made for the benefit of certain settlers and occupants of certain Indian lands in Kansas, permitting such settlers to enter and purchase at the proper land office said lands so occupied by them, in tracts not exceeding one hundred and sixty acres, according to the government surveys, on paying therefor in lawful money of the United States the appraised value of said lands respectively, to be ascertained by three disinterested and competent appraisers, to be appointed by the Secretary of the Interior, who shall examine in person each tract

and report under oath its value, *exclusive of all improvements*; and patents shall issue therefor as in other cases, but no sale shall be made under this act for less than \$3.75 per acre.

All entries under this act were required to be made within two years from the promulgation of the necessary regulations for the sale of the lands. This act was amended by the act of June 23, 1874 (18 Stat., 273), extending the time in which payments for said lands were to have been made.

Some of the parties settlers upon these lands have paid in full, and upon all of the lands valuable improvements have been made. Some of those who have paid for their lands occupied those assessed at the highest valuation. No reason is given why in all these years from 1860 up to the present time, those who are delinquent have failed under the favorable terms of occupancy to make the payments required, under the obligation willingly assumed by them.

The 32 Indians in question, each having located by certificate of allotment, the particular quantity of land which they were severally entitled to receive under treaty stipulations were, through no fault or negligence on their part, subsequently ousted from the possession of such lands by the encroachments of the settlers.

In this view of the case, and in view of the fact that treaty stipulations and legal enactments have secured to such of these allottees or their heirs as may now be living, the benefits of the proceeds of these lands and applications are now on file before the Indian Office for nearly all the proceeds of the claims covered by the 32 allotments. I am not prepared to entertain the proposition contained in the bill presented, or to recommend to Congress, after consideration of the liberality already extended by the Government to these settlers any action looking toward a reduction of the sum which seems so justly due to the Indians.

The true test of the value of the lands in question would be their price in open market at a cash sale, and it is believed that if they were so offered the question of payment would be speedily settled.

I am, however, disinclined to advocate any measure which would seem to bear harshly upon the settlers, and have therefore concluded to recommend further time for payment with the distinct understanding, on the part of those in possession of the lands, that payment on the terms fixed must be promptly made, to avoid forfeiture.

Very respectfully,

C. SCHURZ, *Secretary.*

Hon. D. C. HASKELL,  
*House of Representatives.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, March 29, 1878.*

SIR: I am in receipt, by reference from the House Committee on Public Lands, of bill H. R. 1178, providing for the sale of certain New York Indian lands in Kansas, and requesting the views of this office on the same.

I am also in receipt, by your reference for report, of a letter from the Hon. D. C. Haskell, dated January 18, 1878, inclosing a copy of the same bill, and requesting the views of this office thereon.

In connection therewith I have the honor to report that, by the second article of the treaty of January 15, 1838, with the New York Indians (7 Stat., 550), the United States agreed to set aside for the New York Indians, then residing in Wisconsin and New York, a certain tract of land, west of Missouri, containing 320 acres for each of said Indians, to be held in fee simple, by patent from the President, in conformity with the provisions of the third article of the act of May 28, 1830 (4 Stat., 411), the proviso to which declares that "such lands shall revert to the United States if the Indians become extinct or abandon the same." The treaty vested the Indians with full power and authority to divide said lands, in severalty, among the different tribes and bands, and to sell and convey the same among each other, under such regulations as they might adopt. Indians not accepting and agreeing to remove within five years, or such other time as the President may from time to time appoint, to "forfeit all interest" in "the lands so set apart to the United States."

Under these provisions 32 New York Indians removed to and remained in the Territory now embraced in the State of Kansas prior to June 16, 1860, at which time the honorable Secretary of the Interior approved to them selections of 320 acres each, for which, on the 14th of September, 1860, certificates of allotment were issued to each of said reservees, the certificates specifying that the selections were for the exclusive use and benefit of the reservees, and were not subjected to be "alienated in fee, leased, or otherwise disposed of, except to the United States."

By an act approved February 19, 1873 (17 Stat., 466), Congress authorized such actual settlers as were then residing thereon to enter and purchase said lands in tracts of not

exceeding 160 acres, at an appraised value of not less than \$3.75 per acre, to be ascertained, under the direction of the Secretary of the Interior, by three appraisers appointed to value the same, the funds arising from the sale to be paid into the Treasury of the United States, in trust for such of said New York Indians or their heirs as might, within five years, establish their identity; and in absence of such proof within the time specified, the proceeds of the sales to become a part of the public moneys of the United States: "Provided, That any Indian to whom any of said certificates was issued, and who is now occupying the land allotted thereby, shall be entitled to receive a patent therefor."

All entries under this act were required to be made within two years from the promulgation of the necessary regulations for the sale of the lands.

This act was amended by the act of June 23, 1874 (18 Stat., 273), so as to allow the payments to be made in two annual installments, the first payments to be made on or before the 30th day of September, 1875, and the remainder within one year thereafter, with interest at 6 per centum per annum.

The commissioners appointed under the act of 1873 to appraise the lands reported on the 26th of July, 1873, that none of the 32 New York Indians were living on the lands at that time or at the date of the act, but that all of said lands were then occupied by actual settlers, whose names were given in the report opposite the description of the tract on which they had respectively made settlement. The lands were valued by the appraisers at an average of \$4.9076 per acre, and their report was approved by the department September 30, 1873.

Instructions were issued by the Secretary, under the same date, directing that the lands should be sold under the instructions of the General Land Office by the district land officers, who were directed to notify the settlers entitled to purchase by published advertisement of a general character in a newspaper published in the vicinity of the land that payment would be required within two years.

In pursuance of these instructions, as it appears from a letter of the honorable Commissioner of the General Land Office, dated July 3, 1877, the following sales have been made:

First. N.  $\frac{1}{4}$  section 26, 23 S., 25 E., allotted to Joseph Johndroe, there has been sold, at \$5 per acre, cash, to Benjamin Brown, the N.E.  $\frac{1}{4}$  of said section; consideration, \$5.00.

Second. From N.  $\frac{1}{4}$  section 27, 23 S., 25 E., allotted to Margaret Johndroe, there has been sold, at \$5 per acre, cash, to Nathaniel Oates, the S.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$ ; consideration, \$4.00.

Third. From the S.  $\frac{1}{4}$  of said section 27, allotted to Michael Gray, there has been sold, at \$4.50 per acre, cash, to Nathaniel Oates, the N.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$ ; consideration, \$3.60.

Fourth. From W.  $\frac{1}{4}$  section 4, 24 S., 25 E., allotted to James Scrimpsher, there has been sold, at \$4.75 per acre, cash, to S. McEwing, the N.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$ ; consideration, \$3.90.

Fifth. From N.  $\frac{1}{4}$  section 27, 23 S., 25 E., allotted to Margaret Johndroe, there has been sold, at \$5 per acre, cash, to William M. Beckford, the N.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , and at \$4.50 per acre, to the same party, the N.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  of said section; consideration, \$7.60.

Sixth. From the same allotment, there has been sold, at \$4.50 per acre, and paid in full, in two installments, with \$10.77 interest, to John Barrett the S.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$ ; consideration, including interest, \$370.77.

Seventh. From the W. fractional  $\frac{1}{4}$ , sec. 2, 24 S., 25 E., allotted to Joseph Fox, there has been sold, at \$5 per acre, and paid in full, in two installments, with \$23.80 interest, to Joanna Glendenning the N. W. fractional  $\frac{1}{4}$ , containing 156.76 acres; consideration, with interest, \$822.60.

Eighth. And from the E. fractional  $\frac{1}{4}$  sec. 6, 24 S., 25 E., allotted to Mary Predone there have been sold, at \$5 per acre, to Levi T. Call, the W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of said section amounting to \$480, one-half of which was paid at date of purchase, September 29, 1875, and the balance with interest is still due and unpaid.

There has therefore out of an aggregate of 10,215.63 acres, valued at \$50,850.00, been sold 879.76 acres for the sum of \$3,858.80; leaving unsold 9,335.87 acres, valued at \$46,991.25, or an average of \$5.02  $\frac{1}{2}$  per acre, which aggregate amount, would, according to the terms of the act of February 19, 1873, if not claimed by the allottees or their heirs, inure to the United States at the end of five years, which have expired.

The bill under consideration proposes to reduce the aggregate value of the unsold lands over one-half, or to \$23,339.68, and if the lands are not sold, at the diminished rate of \$2.50 per acre, within one year, that patents shall issue in the names of the original allottees, for the balance unsold.

With these provisions of the bill, I am not inclined to concur, for the following reasons:

Under the treaty of 1838, the New York Indians were entitled to 1,824,000 acres of land in Kansas, and a removal fund of \$400,000, which the United States never provided. Notwithstanding the failure of the United States in this regard, portions of the Indians removed to Kansas subsequent to the treaty, with a view to making that country their permanent home, but on account of their rapid depletion in numbers from sickness, a majority afterwards returned to New York.

By decision of April 19, 1858, the honorable Secretary of the Interior held that these

of the New York Indians who had not removed had thereby forfeited their title to the reserve, and that the same should be opened to settlement; but in the execution of said decision, and prior to the proclamation of December, 1860, opening the lands to settlement, the allotments under consideration were made to the 32 Indians who were then in Kansas, and certificates were issued to them therefor.

It follows, therefore, that an equitable interest in fee in the lands vested in these Indians, by virtue of the grant contained in the treaty, at the date of their removal and long prior to the settlement of Kansas, although the evidence of title did not issue until 1860.

They accordingly assumed the condition of legal ownership, by purchase, over the lands subsequently allotted to them, at an early day, and are entitled to the benefits of any appreciation of value arising from the settlement and improvement of the country.

This doctrine is, I am aware, in opposition to a somewhat prevalent opinion as to the right of the Indians. It has been urged in similar cases that as the Indians have not improved their lands they are not entitled to the advance in value incident to the settlement of the country. The purchase of wild lands, and holding of the same to await the improvement of the country, has been one of the most popular and safe, as well as the most remunerative methods of investment known, and I can see no grounds upon which Indians taking an equitable title in fee should be deprived of the benefits never denied to white purchasers of public lands, bought and held for speculative purposes only.

Informal claims have been filed in this office by the original allottees, or their heirs, covering nearly all the proceeds arising from the sale of these lands when sold.

There is no evidence on file in this office, aside from the letters of Mr. Haskell, showing that it is the desire of these Indians that the lands should be sold at a reduced price.

The lands are in Bourbon County, one of the richest and most fertile counties in the State. They are within a few miles of Fort Scott, and near the line of the Missouri, Kansas and Texas Railroad—the Missouri River, Fort Scott and Gulf Railroad running nearly through the center of the body of the lands, which lie in close proximity to the corner of townships 23 and 24 in ranges 24 and 25 east. The records of the General Land Office show that there is scarcely a vacant forty-acre tract of land in or near the townships named. With these facts in view, it is safe to assume that the several tracts were, in 1873, worth the full amount at which they were appraised, and that, in view of the rapid development of the country, and the present price of uncultivated lands in that vicinity, there has, at least, been no depreciation in their value.

The settlers have been in possession of these lands for years, to the exclusion of the Indians, and have had every advantage and opportunity to pay for the lands from the products of the same.

The title of the Indians is, under treaty stipulations, similar to those with the Shawnee, Miami, and other Indians in Kansas, whose lands have been held by the Supreme Court of the United States (5 Wall., 737) to be excluded from the jurisdiction of the State, and *not subject to taxation*, and it is fairly presumable that the settlers have availed themselves of the benefit arising under this decision.

For these and other reasons which might be urged, I cannot recommend the passage of the bill in its present form. It is, however, very desirable that adequate legislation be had insuring the sale of these lands and the final settlement of all questions in connection therewith.

I have, therefore, to recommend that the bill be amended as follows: Strike out all after the word "office" in the twelfth line, and insert, in lieu thereof, the following:

"At any time within one year from the passage of this act said lands so occupied by them in tracts not exceeding one hundred and sixty acres, according to the government surveys, at not less than the appraised value of the said tracts, as heretofore ascertained by the Secretary of the Interior, in accordance with the provisions of the act of February nineteenth, one thousand eight hundred and seventy-three, entitled 'An act to provide for the sale of certain New York Indian lands in Kansas,' payment to be made in three annual installments, one-third at date of entry, one-third at the end of one year from date of entry, and the balance in two years from date of entry, with interest on said amounts, respectively, from date of entry, at six per centum per annum; and the moneys arising from such sales shall be paid into the Treasury of the United States in trust for, and to be paid to said Indians, respectively, to whom said certificates were issued, or to their heirs, upon satisfactory proof of their identity to the Secretary of the Interior, at any time within three years from the passage of this act: and in case such proof is not made within the time specified, then the proceeds of such sale, or so much thereof as shall not have been paid under the provisions of this act, shall become a part of the public moneys of the United States.

"Sec. 2. That any lands not entered by such settlers at the expiration of one year from the passage of this act shall be offered at public sale, in the usual manner, at not less than the appraised value, notice of said sale to be given by public advertisement of not less than thirty days; and any tract or tracts not then sold, together with such

tracts as have heretofore been or may hereafter be entered, and wherein default has been made in the payment of any portion of the purchase money, or the interest thereon, as herein or heretofore provided, shall be thereafter subject to private entry at the appraised value of said tracts."

I inclose herewith a schedule showing the names of the 32 allottees named in this report, the description of the lands allotted to each, with the names of the settlers claiming the lands placed opposite the tract claimed by them.

The bill referred by the House committee, together with the letter of Mr. Haskell with inclosure, is herewith respectfully returned.

I have the honor to be, very respectfully, your obedient servant,

E. A. HAYT,  
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.



Description and valuation of New York Indian lands as appraised in the year 1873.

Description.	Section.	Township.	Range.	Number of acres.	Value per acre.	Total value.	Name of reservee.	Name of settler.
NW ¼	26	22	24	160.00	\$9.50	\$1,040.00	Mary Ann Gray	Lynan Schaffer.
SW ¼	26	22	24	160.00	6.00	960.00	do	Edward Schaffer.
SE ¼	27	22	25	160.00	4.50	720.00	Michael Gray	Mary D. Nickerson, S. ¼; Nathaniel Oates N. ¼; William Morehead, W. ¼ and SE ¼; R. Simmons, NE ¼
SW ¼	27	22	25	160.00	4.50	720.00	do	William M. Beckford, N. ¼; Nathaniel Oates, S. ¼; William M. Beckford, N. ¼; John Barrett, S. ¼; Benjamin Bowman.
NE ¼	27	22	25	160.00	5.00	800.00	Margaret Johnson, ar	James Barrett, N. ¼; Mary Hodges, S. ¼.
NW ¼	27	22	25	160.00	4.50	720.00	do	George McNeal.
NE ¼	28	22	25	160.00	5.00	800.00	Joseph Johnson	Nathaniel Lowrie.
NW ¼	28	22	25	160.00	4.00	640.00	do	W. A. Dillon, N. ¼; Henry Brown, S. ¼.
SE ¼	28	22	25	160.00	4.00	640.00	A. gnes Johndroe	John Clendenen.
SW ¼	28	22	25	160.00	3.75	600.00	do	James E. Simpson.
NW ¼	28	22	25	160.00	3.75	600.00	Bridget Johndroe	Benjamin H. McAdams.
SW ¼	28	22	25	160.00	3.75	600.00	do	Gilbert Carlisle.
NW ¼	28	22	25	160.00	3.75	600.00	do	Thomas Foster.
SW ¼	28	22	25	160.00	3.75	600.00	John Johndroe	George H. Clark, E. ¼; J. A. Clark, W. ¼.
NE ¼	28	22	25	160.00	3.75	600.00	do	Isiah Longbury.
SE ¼	28	22	25	160.00	3.75	600.00	do	Francis M. Allen.
NW ¼	28	22	25	160.00	3.75	600.00	do	Michael Walka.
SW ¼	28	22	25	160.00	4.00	640.00	Margaret Johndroe, jr	Robert Montgomery.
NE ¼	28	22	25	160.00	3.75	600.00	do	Simson Burkholder, E. ¼; Patrick Quigley, NW ¼.
NW ¼	28	22	25	160.00	3.75	600.00	do	George R. Scott.
SW ¼	28	22	25	160.00	5.00	800.00	Cecelia Erroe	Abram Burkholder.
SE ¼	28	22	25	160.00	5.00	800.00	James Erroe	Charles Betch, S. ¼; J. M. Scott, N. ¼.
NW ¼	28	22	25	160.00	3.75	600.00	do	Samuel Bell.
SW ¼	28	22	25	160.00	4.25	680.00	do	E. L. Faylor.
NE ¼	28	22	25	160.00	4.25	680.00	Lewis Erroe	Oranur Chapman.
SE ¼	28	22	25	160.00	5.00	800.00	do	Jacob L. Conkhill.
NW fractional ¼	28	22	25	160.00	3.75	597.87	Henry Logatrine	John Murphy.
SW fractional ¼	28	22	25	159.46	4.75	759.14	do	Benjamin Silecta.
NE ¼	28	22	25	159.82	4.75	759.14	Mary Logatrine	James Guilfoyle.
SE ¼	28	22	25	160.00	10.00	1,600.00	do	Lidia A. Huxey.
NW ¼	28	22	25	160.00	7.00	1,120.00	Elizabeth Bratman	Robert Hayes.
SE ¼	28	22	25	159.00	7.00	1,113.00	do	James Hurverley.
NW ¼	28	22	25	159.00	6.00	954.00	do	
SE ¼	28	22	25	157.00	7.00	1,099.00	Lewis Petelle	
NW fractional ¼	28	22	25	157.00	6.50	1,020.50	do	
SW ¼	28	22	25	155.38	7.50	1,165.00	Napoleon B. Petelle	
NE fractional ¼	28	22	25	160.00	6.00	960.00	do	

Description and valuation of New York Indian lands, &amp;c.—Continued.

Description.	Section.	Township.	Range.	Number of acres.	Value per acre.	Total value.	Name of reservee.	Name of settler.
NW, fractional $\frac{1}{4}$ .....	2	24	24	154.14	\$90.00	\$24 84	Catharine Petelle.....	William Love.
SW, $\frac{1}{4}$ .....	2	24	24	160.00	3.75	600.00	do.....	John Darling.
NW, $\frac{1}{4}$ .....	6	24	25	160.64	5.00	803.20	Martin Predom.....	S. M. Johnson.
SW, $\frac{1}{4}$ .....	6	24	25	162.63	5.00	813.15	do.....	James Ellard.
NE, fractional $\frac{1}{4}$ .....	6	24	25	159.28	5.00	796.40	Mary Predom.....	William Lowie.
SE, $\frac{1}{4}$ .....	6	24	25	160.00	5.00	800.00	do.....	Jacob Falew, S. $\frac{1}{4}$ .
NW, fractional $\frac{1}{4}$ .....	5	24	25	159.25	5.00	796.25	Rosalie Predom.....	John Ruble, N. $\frac{1}{4}$ and SE, $\frac{1}{4}$ .
SW, $\frac{1}{4}$ .....	5	24	25	160.00	5.00	800.00	do.....	Richard Carter.
NE, fractional $\frac{1}{4}$ .....	5	24	25	159.67	6.00	958.02	Daniel Jack.....	Henry Ruble.
SE, $\frac{1}{4}$ .....	5	24	25	160.00	6.50	1,040.00	do.....	Thomas Clark.
NW, $\frac{1}{4}$ .....	4	24	25	160.72	6.00	964.32	James Scripps.....	John McNeil.
SW, $\frac{1}{4}$ .....	4	24	25	160.60	4.75	768.00	do.....	S. R. Delano, S. $\frac{1}{4}$ .
NE, $\frac{1}{4}$ .....	4	24	25	162.40	5.00	812.00	Louisa Scripps.....	S. R. Delano, S. $\frac{1}{4}$ ; S. McEwing, N. $\frac{1}{4}$ .
SE, $\frac{1}{4}$ .....	4	24	25	160.00	5.50	880.00	do.....	George A. Wagoner, S. $\frac{1}{4}$ ; A. E. Wagoner, N. $\frac{1}{4}$ .
NW, $\frac{1}{4}$ .....	3	24	25	160.64	4.75	773.54	James King.....	David Mack.
SW, $\frac{1}{4}$ .....	3	24	25	160.00	4.75	760.00	do.....	John A. Tiffany.
NE, $\frac{1}{4}$ .....	3	24	25	161.44	4.50	726.48	Mary King.....	Levi Ammauer, S. $\frac{1}{4}$ ; E. H. Hooker, N. $\frac{1}{4}$ .
SE, $\frac{1}{4}$ .....	3	24	25	160.00	4.50	720.00	do.....	David Washburne.
NW, fractional $\frac{1}{4}$ .....	2	24	25	160.76	5.00	798.80	Joseph Fox.....	Anderson Carter.
SW, $\frac{1}{4}$ .....	2	24	25	160.00	4.50	720.00	do.....	Joanna Clendenning.
NE, fractional $\frac{1}{4}$ .....	2	24	25	157.60	3.75	590.90	Mary Yellowjacket.....	Benjamin Fishart.
SE, $\frac{1}{4}$ .....	2	24	25	160.00	4.50	720.00	do.....	William Denton, NW, $\frac{1}{4}$ ; Jessie Allen, E. $\frac{1}{4}$ and SW, $\frac{1}{4}$ .
NE, fractional $\frac{1}{4}$ .....	2	24	25	162.06	5.00	810.30	Sue Yellowjacket.....	Adam Kyle.
NW, fractional $\frac{1}{4}$ .....	3	24	24	152.14	5.50	836.77	do.....	Audlin Warner.
SE, $\frac{1}{4}$ .....	3	24	24	160.00	5.50	880.00	Ann Yellowjacket.....	John Ketting.
SW, $\frac{1}{4}$ .....	3	24	24	160.00	4.00	640.00	do.....	Charles Hagen.
SW, $\frac{1}{4}$ .....	3	24	24	160.00	4.00	640.00	do.....	George W. Bolster.

## INDUSTRIAL TRAINING SCHOOLS FOR INDIANS.

APRIL 6, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. POUND, from the Committee on Indian Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 1735.]

The Committee on Indian Affairs, having further considered the bill (H. R. 1735) entitled "A bill to increase educational privileges and establish additional industrial training schools for the benefit of youth belonging to such nomadic Indian tribes as have educational treaty claims upon the United States," report the same back with amendments, with the recommendation that it pass when so amended.

The committee, in reporting this bill for final action, beg to restate and reaffirm the considerations set out in their report of June 14, 1879, submitted for printing and recommitment, and to supplement and emphasize the same by citing a few pertinent facts of subsequent history. The following is from the report above referred to:

Your committee beg to submit, in support of such recommendation, that the government has made treaty stipulations with several nomadic tribes of Indians, specifically providing for educational advantages for their youth "between the ages of six and sixteen"; notably with the Cheyennes and Arapahoes, Kiowas and Comanches, Crows, Navajoes, Sioux, Utes, and the Northern Cheyennes and Arapahoes.

These several treaty provisions now in force are, in like terms, as follows (see treaty between the United States and the Cheyennes and the Arapahoes, proclaimed August 19, 1868, article 7):

"In order to insure the civilization of the tribes entering into this treaty, the necessity of education is admitted, especially by such of them as are or may be settled on said agricultural reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher."

The treaties referred to were made in 1868; the tribes named including about 71,000 Indians, having upward of 12,000 youth eligible to such school advantages. Ten years have elapsed since these treaties were concluded (twenty being the term of the stipulation), and less than 1,000 youth have received schooling as provided. In what degree the failure to carry into effect these treaty provisions may be attributed to the failure on the part of the United States to provide adequate school facilities, or on the part of the several tribes to a disinclination or refusal to accept such facilities and compel the attendance of their children, your committee cannot definitely state, neither is it deemed material. It is clear that the material interests and well-being of the Indians and the government, as well as the cause of civilization and humanity, alike demand that these provisions be fully carried out and enforced. This bill provides for the utilization, for such school purposes, of vacant military posts and barracks, "so long as the same may not be required for military occupation," and the employment of officers of the Army, either from the active or retired list, as teachers

or otherwise, to be detailed by the Secretary of War, with no extra allowance for such service; such schools to be conducted as normal and industrial schools, for the training of Indian youth of the nomadic tribes, under the direction of the Secretary of the Interior. It is believed that the measures and methods so provided will prove economical, acceptable, and efficient, and, if thoroughly carried out and enforced, must eventuate in great and incalculable good to the Indians and to the government. Industrial education, as a means of civilizing and elevating the savage, has ceased to be experimental.

The effort in this direction recently undertaken, and now in successful progress at the Industrial and Normal Institute at Hampton, furnishes a striking proof of the natural aptitude and capacity of the rudest savages of the plains for mechanical, scientific, industrial, and moral education, when removed from parental and tribal surroundings and influences. Upon this subject, in his report of November 1, 1874, the Commissioner of Indian Affairs says:

"Experience shows that Indian children do not differ from white children of similar social status and surroundings in aptitude or capacity for acquiring knowledge, and opposition or indifference to education on the part of parents decreases yearly, so that the question of Indian education resolves itself mainly into a question of school facilities."

He further speaks of the present policy in this regard as not only "short-sighted," but "in direct contravention of treaty stipulation," and concludes that "what should be the work of a year will be protracted through a decade, and the work of a decade through a generation." In a letter addressed to the Secretary of the Interior, April 28, 1879, relative to the provisions of this bill, the Commissioner says "that the proposition to make use of unoccupied military posts or barracks and the detail of certain Army officers in connection with industrial and normal training schools for the benefit of Indian youth has the unqualified approval of this department"; and, after quoting from his annual report, wherein attention is called to treaty violations on the part of the government, and to the deficiencies of the present system, he adds:

"The plan of utilizing vacant military posts and barracks will in a degree meet the great deficiencies of this work. It has in it the merit of saving much in the cost of buildings for such as can be accommodated, and it is hoped the speedy execution of it may not be delayed for want of such necessary authority as is needed from Congress. The experience of the department has been that the best results are obtained by a removal of the children from all tribal influence during the progress of education, so that educators can command all the time and attention of their pupils. Youth so educated return to their tribes as teachers, interpreters, and examples in farming, &c., and, if properly sustained and guided thereafter, prove far more effective guides than whites of the same capacity. Nothing is more essential than that Indian youth while passing through school should have thorough instruction in some practical branch of labor, that will meet his or her needs for obtaining a livelihood after leaving school."

The schools contemplated to be established by the bill under consideration will have this direction. Farming, the care of stock, mechanics, and other needful industries will be an important feature, and it is expected that in course of time many of the teachers, interpreters, farmers, blacksmiths, carpenters, and other employes required at the agencies may be supplied by Indian youth educated for that purpose.

The department has in course of training at the Hampton Normal and Industrial School in Virginia sixty-six Indians, boys and girls, from eight different nomadic tribes; and although this work was only begun last year, the results already demonstrate that no better plan now exists. The Hampton school was established in the interest of the colored race, with the avowed purpose of teaching them the "salvation of hard work." This spirit seems to meet the needs of the Indian race equally well, and the very considerable number of agents, teachers, missionaries, and others engaged in or interested in Indian educational work, who have visited and witnessed the methods of Hampton, join in commending it as just what the Indian needs. The intercourse between the youth at Hampton and their parents and people on the plains has produced extraordinary interest and demand for educational help from these tribes.

It is as commendable as it is notable, that our modern systems of education are looking more and more to the training of hands to work. Useful employment, either of the head or hands, for all classes of society, is absolutely essential to the preservation of good order, public and private morals, and good government. It therefore cannot be too strongly urged, that in the education of Indian youth the primary aim should be to train the hands to work, and to impress upon them the absolute importance of useful labor to insure their well-being and happiness, as well as the ability to properly converse, read, write, and calculate.

The following are some of the vacant posts, with barracks and quarters, which may be used for school purposes, as proposed by this bill, named by the Adjutant-General, to wit: Fort Bridger, Wyoming; Carlisle Barracks, Pennsylvania; Fort Craig, New

co; Fort Cummings, New Mexico; Forts Harker and Larned, Kansas; Fort on, Florida; Fort Rice, Dakota; Fort Sedgwick, Colorado; and Camp Stambh, Wyoming.

it not wise economy to occupy these government buildings and premises for the ts contemplated, employ (in part) Army officers who are fitted, as teachers and wise, in connection with such schools, and to vigorously and adequately pro- and enforce the treaty stipulations recited; thereby not only discharging a n government obligation and duty, but speedily accomplishing the education, tion, and civilization of all the savages in our land? It is believed that herein be found the true solution of the Indian question, and, if adopted and duly exe- , a generation will not pass before the use of a standing army to protect our iers from Indian raids, depredations, barbarities, and murders will no longer be red.

view of its treaty obligations and of every consideration of sound public policy, overnment can surely afford to enter upon and speedily consummate such a work. nnot afford to longer neglect it.

ending action upon this measure, and in pursuance of its policy, a ol has been established in the Carlisle Barracks, in the State of nsylvania, which is progressing in a most successful manner.

ction 7 of chapter 35 of the statutes passed at the first session of present Congress, provides "that the Secretary of War shall be orized to detail an officer of the Army, not above the rank of captain, special duty with reference to Indian education."

nder authority of this act Capt. R. H. Pratt, of the Tenth United es Cavalry, was detailed for this special service, and the barracks ed above were assigned for the use of such school, which was opened e month of October last with one hundred and fifty-eight pupils ttendance, of whom forty were females. These youth were volun- y committed to the charge of Captain Pratt by their parents, and ainly children of the chiefs and headmen of the Rosebud, Pine ge, and Sisseton Agencies in Dakota Territory, the Cheyenne and paho, Kiowa and Comanche, Pawnee, Ponca, and Nez Percé Agen- in the Indian Territory, and the Green Bay Agency of Wisconsin. ived in the rudest state of savagism, their progress is already most arkable.

our committee, accompanied by the Secretary of the Interior and rs, made a visit of inspection to this school on the 21st of February and were highly gratified with the methods of education and train- adopted, and the marvelous advancement already manifest, which attest the feasibility and wisdom of such a policy. The following act from a report submitted by Captain Pratt to the visitors on the sion referred to will be of interest in this connection:

e aim of the school is to give education in the common English branches adapted e condition in life of the students; to inculcate habits of industry and thrift, and part to them such knowledge in common useful pursuits as will make them feel eliant and incite them to free themselves from the position of government pau-

s claimed for this school that it serves a double purpose—first, as an educator of who are here, and, second, as an educating and controlling influence over the ns of the West. It is plain that they will feel a lively interest in an institution h shelters and provides for their children. It is also plain that the fact of having so many children of chiefs and headmen is an effectual guarantee of the good ior of the tribes represented. Our buildings furnish ample accommodation 50 students; and by adding recitation rooms, 500 can be handled. Increase of ers would reduce the per capita cost.

ordinary intelligence is now exhibited by the pupils in all the departments, and progress is already greater than we had expected. Their personal influence on ndians at home is very great, and is entirely on the side of friendship, good feel- and progress. The tide of Indian sentiment hasset toward education. Our cor- ndence with agents, educators, missionaries, and Indians themselves is very , and it all indicates that the time has arrived when almost every Indian child become a pupil in an English school.

The bill submitted by the Indian Committee, directing the use of vacant military posts for the establishment of industrial training schools, ought to provide the best opportunities for thousands, and their agency schools would receive new impetus, and through these means most of the wild Indians can surely be placed upon a self-supporting basis before many years.

To the foregoing might be added many significant data and other pertinent considerations, showing the feasibility, economy, and eminent fitness of the policy so well initiated in the school above described.



## CERTAIN UNPAID ACCOUNTS IN INDIAN BUREAU.

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APRIL 6, 1830.—Referred to the House Calendar and ordered to be printed.

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Mr. WHITEAKER, from the Committee on Indian Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 3458.]

*The Committee on Indian Affairs, to whom was referred bill H. R. 3458, having had the same under consideration, beg leave to make the following report thereon:*

It appears there are now many claims filed in the Indian Department and with the accounting officers of the Treasury for services and supplies furnished at various Indian agencies, which services and supplies seem to have been furnished in good faith, and which were actually needed in carrying out the policy of the government with regard to the Indian service, and which supplies and labor were absolutely necessary to the subsistence of the Indians who received them; but that they were obtained and liabilities created therefor in excess of appropriations then made for such purposes. From information obtained from the department, it seems these claims are generally small, but owed to persons who cannot well afford to lose a small sum when honestly due them. The bill proposes to direct the accounting officers of the Treasury to audit and allow these claims where the services and supplies shall be found to have been actually applied to the benefits of the Indians. The bill seems to be just in its provisions, for if the supplies furnished and services were not necessary and applied to the benefits of the Indians, the accounting officers will have no authority to allow them; and if they were furnished in good faith and were necessary to the service, and the Indians got the benefit of them, they ought to be paid for. A letter from the Commissioner of Indian Affairs, in which he recommends the passage of this bill with certain amendments, is hereunto annexed and made a part of this report.

The committee therefore report the bill back with amendments to the House, and recommend that the amendments be adopted and that the bill do pass.

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DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
Washington March 23, 1830.

SIR: I acknowledge the receipt of your letter of the 11th instant, in which you inclose, at the request of Hon. J. Whiteaker, the bill (H. R. 3458) "to authorize the auditing of certain unpaid accounts in the Indian Bureau," and in which you request an expression of the views of this office on the bill and the proposed amendments noted thereon.

In reply, I have to state that the legislation proposed by the inclosed bill is a just

and necessary measure, and would afford relief to a large number of creditors who have filed valid claims, and have been deprived of their just dues for services rendered and supplies furnished for the Indian service, for want of necessary appropriations to meet the same.

Regarding the proposed amendments, as indicated in lines 6, 7, 8, and 9, I respectfully recommend the following, viz: that lines 6, 7, and 8 be changed to read "in the fiscal year 1879 and prior years," and in line 9 to insert the word "its," so as to read "or its agents."

I would also recommend that the title of the bill be amended by adding the words "and accounting officers of the Treasury," for the reason that a large percentage of the claims in question are now in the office of the Second Auditor of the Treasury for examination.

The bill is returned herewith.

Very respectfully,

R. E. TROWBRIDGE,  
*Commissioner.*

A. H. GALLAWAY,  
*Clerk House Committee on Indian Affairs, House of Representatives.*

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## COURTS OF JUSTICE IN ALASKA.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MULDROW, from the Committee on the Territories, submitted the following

### REPORT:

[To accompany bill H. R. 5633.]

*The Committee on the Territories, to whom was referred the letter of the Secretary of the Treasury, dated January 2, 1880, and addressed to the Speaker of the House of Representatives, calling attention to the necessity of some additional legislation by Congress to aid and advance the better interests of the public service in Alaska, have, after full and fair consideration of the subject, agreed upon the following report and bill for that object:*

The third article of the treaty with Russia, of March 3, 1867, by which Alaska was ceded to the United States, provides that the inhabitants of this Territory, with the exception of the uncivilized native tribes, shall be admitted upon their own volition to the enjoyment of the rights of citizens of the United States; and that they shall be maintained and protected in the full enjoyment of their life, their property, and their religion. The laws of the United States now in force throughout Alaska are the statutes of 1868, which, in section 1954 of the Revised Statutes, provide that the laws of the United States relating to customs, commerce, and navigation shall be extended over said Territory, and in section 1957 of the same is provision that offenses against the said laws committed within that Territory shall be triable in the district courts of the United States, either in California, Oregon, or Washington Territory. These two provisions of the general law of 1868 have been found inadequate to protect the persons and property of the white inhabitants of Alaska, who are alone amenable to our laws and customs. Your committee have, therefore, carefully reviewed the whole matter, examined into the character and resources of the country in question, ascertained the numbers, location, and occupation of its people, and, in the light of this information, have prepared the accompanying bill, which it is believed meets all the just demands of Alaska for legislation at the hands of this Congress. Explanatory of the committee's action the following digest of the subject is respectfully submitted.

In the first place, it is not generally understood that the superficial area of Alaska is equal to one-sixth of the entire area of the United States and Territories, viz, 580,000 square miles; or, in other words, it is 2,000 miles in continuous expanse of landed surface from east to west, and 1,200 miles direct between its northern boundary and its southern limit.

During the twelve or thirteen years since we have been in possession of this new country our people have been active in exploring, prospecting, and testing its resources. The substantial result up to date of their investigations may be accurately summarized in the following words:

1st. The climatic conditions which exist in Alaska are such as to preclude the successful prosecution of any or all agricultural enterprises or stock farming of any kind whatever.

2d. Nothing very definite or positive is known to-day about the real mining resources of Alaska; thus far no mine of any precious or economic mineral has been discovered in Alaska that is worthy of more than faint local notice.

3d. The only trade or commerce belonging to Alaska at the present day, or that has existed in the past, is the fur-trade and the fisheries. The fur-trade comprises nine-tenths of the entire pecuniary value of the commerce in that region; from the Prylilor or Seal Islands the government derives a net annual revenue of over \$300,000, being the tax paid into the Treasury of the United States by the Alaska Commercial Company, who hold those islands under a lease from the government, so framed as to prevent the slightest injury being done on these islands to the preservation and perpetuation of the interests of the government thereon, and the seal life also. From the fur-trade elsewhere in Alaska, which is divided up among half a dozen rival companies, the government derives no revenue whatever, nor is it practicable to do so. The fisheries of Alaska have not as yet been developed to any noteworthy degree, on account, perhaps, of the poor demand on the Pacific coast for dried or salt codfish and salmon. Half a dozen little codfishing schooners comprise the entire fishing-fleet engaged this season in Alaskan waters.

4th. The people of Alaska, residents, are summed up as follows, viz:

Whites, men, women, and children .....	25
Half-breeds or "Creoles," men, women, and children .....	2,000
Indians or "Koloshians," men, women, and children (an estimate) .....	5,000
Aleutians, men, women, and children .....	2,500
Eskimo or "Mahlemoots," men, women, and children (an estimate).....	4,000
Grand total .....	13,750

It is to this list of the white people of Alaska, made by the direction of the Secretary of the Treasury last October, 1879, and reported to him by Capt. George W. Bailey, commanding the United States revenue-marine steamer *Rush*, who personally in that year visited each and every settlement of the slightest claim to the name which is established and exists in that country; it is to this census for 1879 that the committee have looked for a correct estimate of what is really the need and due of Alaska at the present time for additional legislation from Congress. Certainly no one can deny the fact that the white citizens of Alaska are the only persons up there who can have the least appreciation or understanding of our legislative, executive, and judicial system of law and order, and they are the only ones to whom we can intelligently apply these legal provisions. Any one at all acquainted with Indians and their life will at once admit the futility of attempting to treat those people to courts of justice or trials by jury; the Eskimo are positively out of the question in this connection, while the Aleutians have never known the need of a lawyer or asked for a court.

It is the 250 white citizens of Alaska only who are deprived of those legal rights and privileges and protection that the committee must keep in mind as they frame a bill for the establishment of additional courts

the re-enactment of additional law and penalties, &c., for their protection and relief.

These white people of Alaska are living to-day in the following settlements: At Wrangel, 160; at Sitka, 50; at Kodiak, 10; at Oonga, 4; Belcorskies, 4; at Oonalashka, 7; Seal Islands, 10; Saint Michael's, 8; wandering miners and traders who wander about in canoes and small boats cannot be counted. On looking at the map of Alaska it will be observed that Sitka and Wrangel are located comparatively near together, the extreme southeastern extremity of the Territory; that the next nearest village to them is Kodiak, 750 miles, as the crow flies, to the east-northwest; then from Kodiak to Oonga, the next nearest village, 150 miles to the southwest; then direct to Belcorskies from Oonga is 100 miles; from Belcorskies to Oonalashka, 175 miles; from Oonalashka to the Seal Islands, 200 miles; and from these islands to Saint Michael's is over 600 miles north-northeast. In contemplating the great distances that separate these small Alaskan villages, in which less than two hundred and sixty of our people reside, it should also be borne in mind that the only means of communication between them is by way of San Francisco, Cal.; or, in other words, there is no land travel whatever between them; and when the little trading vessels that sail from California direct to these posts with supplies every spring, summer, and fall, as the case may be, they bear letters and tidings from Kodiak, for instance, when they return to San Francisco, for the friends and relatives of the writers at Sitka; these letters are forwarded from the Golden Gate, via Portland, Oreg., to their destination. And in precisely the same manner do the people of Oonalashka communicate with their kinsmen at Kodiak. Thus, it becomes entirely plain that there is absolutely no practicable means of communication in Alaska between its own scattered, scanty settlements, located as they are with such vast spaces of unbridled land or tempestuous seas and oceans between them.

Therefore, as matters stand to-day in Alaska, your committee find that the white residents of Sitka and Wrangel constitute the only communities in that Territory requiring additional legislation from Congress. It is undoubtedly just and proper that these citizens should have a judiciary, and that the laws of the Territory of Washington relating to crimes and their punishments should be extended over and made the law of Alaska. In accordance with this view, the bill of your committee herewith reported makes provision for a United States district court and three justice's courts, one to be located at Sitka and the other at Wrangel, which are the only two settlements in all Alaska at the present day where a jury can be impaneled. For the maintenance and enforcement of the law to the westward throughout those wide-scattered and far-dispersed settlements, as hitherto noticed, it has been deemed by the committee best and most practicable to direct the holding of a third court at the ports reached by the revenue steamer, as she shall cruise every year between those settlements in discharge of revenue marine duties; thus officers of the law will be brought into every Alaskan settlement once or twice a year, and judging from the past history of the people of Alaska who live beyond Sitka, the court will have little or nothing to do in the future.

Manifestly these officers and their deputies, as designated in the bill of your committee, cannot live upon the fees that might belong to them in the discharge of their duties in Alaska, for the mere handful of people at Sitka and Wrangel could not possibly support such a judiciary, and the others have nothing to go to law about or valuable enough to call for legal arbitration. Your committee has therefore deemed it best to

provide these officers, as designated, with fair living salaries, and in order that they shall not turn the influence of their offices to private or personal gain as traders or agents of trading companies, a proviso has been drawn prohibiting such action.

In order that the wills, &c., of decedents may be proven, registered, and administered in Alaska, the power of probate has been given to the courts as designated in the bill of your committee, and the laws and the practice of the Territory of Washington governing all testamentary and probate proceedings are made in this bill the law and practice for Alaska. Thus these courts become courts of record, and all quieting of titles, signing of contracts, &c., can be duly validated by them.

Finally, with regard to the physical power of the government to protect its citizens in Alaska, and enforce the provisions of law therein, your committee find that ample authority exists, now vested in the President of the United States and the Secretary of the Treasury, who can use the Army, the Navy, and the revenue marine force at will. The past history of the country establishes the fact that a gun-boat is the most effectual and inexpensive power that can be employed for the complete control and subjection of the savages of Alaska.

In conclusion, therefore, your committee have to say that more than the provisions of the bill which they herewith report Alaska does not appear to need in the line of additional legislation from Congress. Whenever she does possess a population of the right character and sufficient in numbers to warrant the establishment of a Territorial form of government within her borders, upon a clear showing of such a claim, she will doubtless be endowed with it. At present, however, no valid claim is made in her behalf for such a government.

Your committee, therefore, call attention to the appended letters of the Secretary of the Treasury, dated January 2, 1880, and March 4, 1880, together with a recent decision from the United States circuit court of Oregon, all of which illustrate the need and importance of the passage of the bill of your committee as reported herewith.

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TREASURY DEPARTMENT, OFFICE OF THE SECRETARY.

*Washington, D. C., January 2, 1880.*

SIR: I have the honor to call attention to the fact that in the last annual message of the President to Congress reference was made to the third article of the treaty with Russia, of March 3, 1867, by which Alaska was ceded to the United States, which provides that the inhabitants of said Territory, with the exception of the uncivilized native tribes, shall be admitted to the enjoyment of the rights of citizens of the United States, and shall be maintained and protected in the full enjoyment of their liberty, property, and religion. The President stated that both the obligations of said treaty and the necessities of the people require that some organized form of government over the Territory of Alaska be adopted. Reference was also made to the subject in the last annual report of this department, and the purpose was therein expressed to submit a form of bill to establish a government for the Territory of Alaska. The only government officers now located in that Territory are the customs officers, and their powers are confined to the discharge of their duties as such, and give them no jurisdiction over offenses against the public peace or the rights of citizens.

Section 1954 of the Revised Statutes provides that the laws of the United States relating to customs, commerce, and navigation shall be extended over said Territory, and section 1957 provides that offenses against the same, committed within that Territory, shall be triable in the district courts of the United States in California, Oregon, or Washington Territory. These have not been found adequate to protect the persons and property of the inhabitants there, and, in accordance with the purpose before indicated, I transmit herewith a form of bill to provide for the appointment of justices of the peace and constables for that Territory, and for the extension of the criminal laws of Oregon over the same. The authority proposed to be vested by this bill in the

collector of customs is on account of the fact that he is the chief United States officer located in the Territory.

It is thought that this bill provides the necessary measures to protect the people of that Territory until a Territorial government shall be deemed advisable, and it is hoped that the subject will receive the careful consideration of Congress.

Very respectfully,

JOHN SHERMAN,  
*Secretary.*

HON. SAMUEL J. RANDALL,  
*Speaker of the House of Representatives, Washington, D. C.*



TREASURY DEPARTMENT, March 4, 1886.

SIR: I understand that the bill forwarded by this department to Congress some time since in regard to providing courts for the Territory of Alaska, was referred to your committee. In connection with this bill I now inclose a copy of a decision of Judge Deady, of the United States circuit court for the district of Oregon, on the trial of a man indicted for an assault with a deadly weapon with intent to commit murder at Sitka, Alaska.

Judge Deady held in this decision that there is no law of the United States that punished such offenses. This decision serves to show still more strongly the necessity for some such legislation as was referred to in the bill before specified.

Very respectfully,

H. F. FRENCH,  
*Assistant Secretary.*

HON. H. L. MULBROW,  
*Chairman Committee on the Territories, House of Representatives.*

[From the Daily Oregonian, Tuesday morning, February 16, 1886.]

*Decision in the United States circuit court.*

Deady, J., United States circuit court, district of Oregon.

SATURDAY, February 5, 1886.

THE UNITED STATES }  
vs. } Na. 998. Indictment for attempt to commit murder.  
JOHN WILLIAMS. }

(1) Attempt to commit murder. There is no law of the United States for the punishment of the crime of an attempt to commit murder upon land in places within the exclusive jurisdiction thereof, unless committed by some means other than an assault with a dangerous weapon, as by poison, drowning, or the like.

(2) Dangerous weapon. A dangerous weapon is one likely to produce death or great bodily harm, and a loaded pistol is such a weapon within the knowledge of the court.

(3) *Idem.* When it is practicable for the court to declare a particular weapon a dangerous one or not, it is the duty of the court to do so; but otherwise it is a question of law and fact to be determined by the jury under the direction of the court.

DEADY, J.:

On January 7, 1879, the grand jury for this district found an indictment against the defendant containing two counts. The first one charges him with "an attempt to commit the crime of murder by means not constituting an assault with a dangerous weapon, by willfully and maliciously shooting one Edward Robert Roy," on October 8, 1879, with a loaded pistol with intent him to murder, at Sitka, in the Territory of Alaska. The second one charges him with an assault upon said Roy, at the time and place aforesaid, with a loaded pistol with intent him to kill, and alleges that said Territory of Alaska was then and there Indian territory. The defendant demurred to the indictment upon the ground that the facts stated did not constitute a crime.

The court sustained the demurrer to the second count, holding that Alaska was not "the Indian country" within the purview of section 21 of the act of March 27, 1854 (10 Stat., 270, section 2142 R. S.), defining the crime of an assault by a white person within such country, with a deadly weapon with intent to kill, and citing *United States v. Savaloff*, 2 Saw., 311; *United States v. Carr*, 3 Saw., 302; *Waters v. Campbell*, 4 Saw., 121.

The demurrer to the second count was overruled *pro forma*, whereupon the defendant pleaded guilty thereto and then moved an arrest of judgment for the same in the demurrer. This count is based upon section 2 of the act of March 3, 1825, section 5342 R. S.), which provides in effect that every person who commits an assault with a dangerous weapon upon any place or district of country under the exclusive jurisdiction of the United States, or upon the high seas, or other water within the admiralty jurisdiction, or out of the jurisdiction of any particular State, attempts to commit murder, or to commit an assault with a dangerous weapon, is guilty of a felony, and is punishable by imprisonment for not less than one year, nor more than ten years, or by fine not exceeding \$1,000, or by both such imprisonment and fine, at the discretion of the court. (Section 5342, *supra*.)

Without doubt, Sitka, in Alaska, is a place under the exclusive jurisdiction of the United States, and so far as this charge is concerned, not within the jurisdiction of any organized or judicial district thereof. Therefore, it appearing from the averment that the defendant was first brought within this district for trial, it follows that if the alleged assault is a violation of any law of the United States the demurrer must be denied. (Section 730 R. S., *United States vs. Carr, supra*.)

The only provision in the statutes of the United States for punishing an assault with a dangerous weapon is found in section 5342, *supra*, which provides that an assault with a dangerous weapon is a felony, and is punishable by imprisonment for not less than one year, nor more than ten years, or by fine not exceeding \$1,000, or by both such imprisonment and fine, at the discretion of the court.

The punishment of an assault with a dangerous weapon or with intent to commit a felony committed on the waters within the jurisdiction of the United States, but out of the jurisdiction of any particular State, was provided for in section 4 of the act of March 3, 1825 (4 Stats., 115; section 5346 R. S.), but not the attempt to commit manslaughter unless it was coincident with such an assault. But an attempt to commit murder or manslaughter on land, or an assault there by whatever means, was not punishable by any law of the United States until 1857, when it was stated by section 2 of the act of March 3 of that year, it was declared to be a crime to commit murder or manslaughter, whether on land or water, should be punished as provided therein prescribed, *provided* such attempt was not made by means of the operation of the statute in the act of 1825, *supra*, thus limiting the operation of the statute to cases where the means used were drowning, poisoning, or the like. And probably this was so because of the erroneous impression that the act of 1825 was applicable to assault on land as well as water. But however this may be, as a result of the legislation, it appears that there is no punishment provided for an assault with a dangerous weapon committed within the exclusive jurisdiction of the United States, if committed on land, even if such assault should involve, as it may and does, an attempt to commit murder.

In the drawing of the indictment an effort has been made to bring the charge within the terms of section 5342, R. S., by an averment therein that the attempt to commit murder was made "by means not constituting an assault with a dangerous weapon," and this is necessarily avoided and in effect rendered null by the very statement that the defendant attempted to commit murder by shooting Roy with a loaded pistol.

Whether a particular weapon is a deadly or dangerous one is generally a question of law. Sometimes, owing to the equivocal character of the instrument, or the manner in which it is used, or the manner and circumstances of its use, the question becomes one of fact, and is to be determined by the jury, under the direction of the court. It is practicable for the court to declare a particular weapon dangerous, if it is so used as to be likely to produce death or serious injury. A loaded pistol is not only a dangerous but a deadly weapon, and its purpose of its construction and use is to endanger and destroy life. It is such general notoriety that the court must take notice of it. (*United States vs. Wilson, 122 U. S. 274, 20 S. Ct. 242; United States vs. Wilson, 1 Bald., 99.*) It appears, then, that the defendant, notwithstanding the averment therein to the contrary, that the defendant attempted to commit murder was an assault with a dangerous weapon, and is therefore not punishable by the statute.

The motion in arrest of judgment must be allowed and the defendant acquitted. By this ruling the defendant will escape punishment for what appears to be an atrocious crime, but the court cannot inflict punishment where there is no law to provide it. It is the duty of the legislature to correct the omission of the law, and it is to be hoped that the result in this case will attract the attention of Congress to the matter at an early day.

Rufus Mallory, for the United States.  
William W. Page, for the defendant.



## TERRITORY OF OKLAHOMA.

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APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. FROST, from the Committee on the Territories, submitted the following

### REPORT:

[To accompany bill H. R. 5634.]

*The Committee on the Territories, to whom was referred the bill (H. R. 943) to establish the Territory of Oklahoma, respectfully beg leave to submit the following report:*

The committee recommend as a substitute for the said bill Senate bill No. 1418, entitled "A bill to establish a United States court in the Indian Territory, and for other purposes," and they advise the passage of the same by the House of Representatives.

The chief features of Senate bill No. 1418 are as follows:

Sections 1 to 8, inclusive, establish a United States court, with a jurisdiction coextensive with the Indian Territory.

Section 5 defines the jurisdiction of the court, which shall, in regard to criminal cases, be the same as is now possessed by the United States district court for the western district of Arkansas. It further gives jurisdiction over all offenses committed by one or more members of any tribe or nation of said Territory against the person or property of a member or members of any other tribe or nation therein. Said court shall also have jurisdiction of a civil nature in all suits wherein a citizen or citizens of the United States shall be a party and the adverse party a member or members of one or more Indian tribes or nations in said Territory, or where one or more members of any Indian tribe or nation shall be a party and the adverse party shall be a member or members of any other Indian tribe or nation therein.

Sections 9 to 23, inclusive, provide for the selection of jurors and the practice and proceedings of said court.

Sections 24 to 35 provide for the establishment of a land-office, the survey of the lands, and the partition of the same among the Indians, so that every member of any of the Indian tribes, whether by birth or adoption, an adult or minor, male or female, shall be entitled to 160 acres of land, the remaining lands to be sold by the United States, and the proceeds to be held in trust for the Indians by the United States; and that the lands so taken up by the Indians shall be inalienable and free from any lien for the period of twenty-one years. There is a provision that none of these sections, 24 to 34, inclusive, shall take effect until the five civilized tribes shall assent thereto, either separately or in joint convention.

Section 35 provides that any Indian in the Territory, on compliance with certain requisites, may become a citizen of the United States; and section 36 entitles such an Indian to his proportionate share of the tribal fund.

Your committee, at the outset of their inquiry, are met by three questions:

1st. Whether the proposed legislation will be beneficial to the Indians.

2d. Whether it will be beneficial to the people of the United States.

3d. Whether it be in accordance with the treaty stipulations between the United States and the Indian tribes of the Territory.

All of these questions your committee does not hesitate to answer in the affirmative.

Before attempting an answer to these queries it will be appropriate to the subject-matter before the committee to present in brief a sketch of the present condition of the Indian Territory. The Territory is, in area, 64,214 square miles, or 41,097,027 acres, of the most fertile land on our continent, equally adapted to the cultivation of cereals and of cotton. It is well watered and free from drought, as well as from the grasshopper plague, so fatal to the prosperity of our western territory. The population is about 74,000, of which 57,000 are citizens of the so-called civilized tribes, to wit, the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles. Of these about 20,000 are citizens of the United States, being either negroes or white residents. About 46,000 of this number speak, and most of them read, the English language. This is a larger English-speaking population than resided in any of the organized Territories in 1870, with the exception of Utah and New Mexico. Each of these five nations is independent of the other, with a regularly organized form of government, with written constitutions and codes of laws modeled upon our own. The school system is remarkably good, and the attendance of children as large proportionately as in the States.

Under existing laws the only general jurisdiction exercised over these various tribes is vested in the United States Court at Fort Smith, Ark., and this is limited to cases of a criminal nature, wherein a citizen of the United States is a party plaintiff or defendant, or where the offense is committed upon the person of a citizen of the United States. All other causes, criminal, in which Indians only are parties, and all causes, civil, are triable only before the local tribal courts. The distance of Fort Smith from the inhabitants of the nations offers a very serious obstacle to the course of justice, and all the property of citizens of the United States in the Territory (amounting to about \$12,000,000), as well as all cases of contract between these and the Indians, are adjudicable only before the same courts. No efficient system of extradition in criminal cases obtains between the tribes, and hence many crimes go unpunished. The system of land-tenure is decidedly opposed to any progress in agriculture. It is the tenure in common.

Your committee does not consider it necessary to enter into any lengthened discussion on the benefits of the tenure in severalty. Successive Presidential messages, reports of Commissioners of Indian Affairs, and numerous reports of committees both of the Senate and of this House all enforce the doctrine that civilization and its accompanying advantages have their origin and firmest foundation in the individual ownership of property. A striking illustration of the difference between the two systems may be found in the fact that Labette County, in Kansas, with an area not so large by 40,000,000 acres as the Indian Territory, and one-half the population, produces one million bushels more grain than the whole Territory.

Another anomalous condition of affairs is to be discovered in the legal status of the members of these civilized tribes. Any white man who marries an Indian woman becomes thereby a citizen of her tribe without forfeiting his citizenship in the United States. The offspring of such



a marriage are citizens of both the United States and the tribe of the mother; but a full-blooded Indian cannot become a citizen of the United States without sacrificing his tribal rights.

Your committee, in view of the above facts, conclude that the features of the bill which they offer as a substitute are most favorable to the interests of both the Indian and the white man, because they provide for a tribunal in which all may find ample protection for their personal and property rights—a tribunal they now seek in vain; because they open a way to the division of lands in severalty and thereby promise all the material advantages likely to result therefrom; because they will, if adopted, surely result in a large commercial intercourse between the States and the Territory which cannot fail to be mutually beneficial to both races.

The last question is whether this bill can be passed without a violation of treaty obligations, and here we must refer to the language of the various treaties. In 1866, treaties were made with the five civilized nations. In the treaty with the Cherokees, concluded July 19, 1866, article 13 sets forth: "The Cherokees also agree that a court or courts may be established by the United States in said Territory with such jurisdiction and organized in such manner as may be prescribed by law." There is then a provision that the jurisdiction of their local tribunals over their own subjects shall not be interfered with.

Article 20 of the same treaty prescribes that: "Whenever the national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them."

Article 10 of the Creek treaty of June 14, 1866 is as follows: "The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory." And section 7 of the same article reads: "The Creeks also agree that a court or courts may be established in said Territory with such jurisdiction and organized in such manner as Congress may by law provide."

Article 8, section 8, of the Choctaw and Chickasaw treaty, of same date, 1866, contains a similar provision with regard to the establishment of courts; and article 11 of the same provides for the division of lands in severalty upon consent of their respective councils.

Article 7 of the Seminole treaty of 1866 is similar in its provisions in relation to United States courts. The treaties, then, explicitly agree to the establishment of a United States court with a jurisdiction such as the bill under consideration confers; that is, such a jurisdiction as shall not infringe upon the domain of the local tribunals.

The other two features of the bill—1st. The one providing for the division of the lands in severalty; 2d. The conferring of citizenship upon the Indians—only take effect upon the consent of the latter, and, therefore, in no wise are inconsistent with the treaties.

In conclusion, your committee are of opinion that the past policy of the government towards the Indian tribes has been fraught with ill both to the savage and the white man, and that the future prosperity and even existence of the Indian demands that he should have—

- a. A legalized standing in the courts of the United States.
- b. Ownership of the land in severalty.
- c. The full rights of American citizenship.

As an important step towards this great end, your committee recommend the passage of the substitute reported.



## UNITED STATES COURTS IN THE INDIAN TERRITORY.

APRIL 10, 1880.—Ordered to be printed.

Mr. MULDROW, from the Committee on the Territories, submitted the following as the

### VIEWS OF THE MINORITY:

[To accompany bill H. R. 5634.]

The substitute is objectionable and cannot receive the sanction of the minority of this committee.

#### I.

The first twenty-nine sections provide for the establishment and operation of a United States court in the Indian Territory, with civil and criminal jurisdiction.

Article 13, of the treaty of 1866 with the Cherokee Indians, provides that the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases "where the cause of action shall arise in the Cherokee Nation."

The Choctaw and Chickasaw treaty of 1866 provides for the establishing of United States courts, with such jurisdiction as Congress may prescribe, "but the same shall not interfere with the local judiciary of either of said nations."

The fifth section of this bill violates these provisions. It gives the court to be established *exclusive jurisdiction* of all cases, civil and criminal, wherein the United States, or any citizen of the United States, is a party, where the amount in controversy is not less than one hundred dollars. It totally disregards the local judiciary established by these tribes, and virtually abolishes the courts of their own creation. The exclusive jurisdiction given to the United States court to be established *ex necessitate* will interfere with the local judiciary of the tribes, and seems to be so intended.

The jurisdiction of the local and Federal courts is not to be *concurrent*, but that of the Federal court is to be exclusive. All causes of action, therefore, which would now be triable in the local courts, where the amount in controversy shall exceed one hundred dollars, must then be tried in the Federal court, and in that court alone. But were these articles of these treaties not in existence, there seems to be no urgent necessity for the creation of this court. From the best information in the possession of the committee it would seem that justice is fairly administered by the local courts, and the Territory will compare favorably in its administration of law and in the preservation of the public peace with the Territories of the union organized under the acts of Congress.

There would be less necessity for this legislation still if the United States would observe its treaties, and see to it that its own citizens re-

spected the law, and did not trespass upon territory w exclusively to these Indians—territory which is theirs, a both by the treaties and the patents of our government.

This bill proposes to make a judicial district of the w embracing various tribes, more than thirty in number, bes okees, Creeks, Seminoles, Choctaws, and Chickasaws. Th the bill urge that the treaties with the tribes *named* give for the establishment of a court, but in contending for th disregard the rights of the other tribes in the Territor claimed that all, if any, of the treaties between these oth the government authorize the creation of such a court, an ignores their wishes in the premises and Congress is aske as though they were not in existence.

These uncared for tribes have treaties with the govern though they may be too poor or too ignorant to present here, yet we cannot be unmindful that these treaties ex must operate with binding force upon our sense of justice.

## II.

Another objectionable feature of this bill is that it is q least, whether the members of the Indian tribes will be com in the court to be created by its provisions. It makes th only who are "male residents of the districts being c United States and over twenty-one years of age." If the will be to deprive the members of the Indian tribes of c jurors, no more flagrant disregard of their interest could and the result would be that they and their rights of per erty must be turned over to the tender mercies of traders porations, and the bummers of civilization who may chance country to despoil them of their property.

## III.

The next object of the bill is to survey and allot the lan the reservations of the Choctaw, Cherokee, Chickasaw, Cr inole Nations into title and possession in severalty, which by the people of those nations in common. Their treaties the laws of Congress heretofore enacted, protect them ag islation. The act of May 28, 1830, provides—

That it shall and may be lawful for the President of the United S much of any territory belonging to the United States west of the n not included in any State or organized Territory, and to which the " been extinguished, as he may judge necessary, to be divided into a su districts for the reception of such tribes or nations as may choose lands where they now reside and remove there, and to cause such of be described by natural or artificial marks so as to be easily distingui other. \* \* \* That in the making of any such exchange or exchan may be lawful for the President solemnly to assure the tribe or nation exchange is made that the United States will forever secure and gu and their heirs and successors the country so exchanged with them, a it, the United States will cause a *patent* or *grant* to be made and exec the same: *Provided*, That such lands shall revert to the United State become extinct or abandon the same. \* \* \* That it shall and m the President to cause such tribe or nation to be protected at thei against all interruption or disturbance from any other tribe or natio from any other person or persons whatever.

This act is really the foundation of the present "Indian der its provisions all of the present Indian country (in wh

e nations) is set apart, with its fixed metes and bounds, outside of limits of any State or Territory of the United States, embracing an of about 44,154,240 acres of land, to which the "Indian title" was *guished before the removal of these nations there.*

is act also preserves *involute* the treaties before made with the In- s, among which was the Cherokee treaty of —, 1828 (Revision dian Treaties, p. 61), which provides as follows:

ereas it being the anxious desire of the Government of the United States to secure Cherokee Nation of Indians, as well those now living within the limits of the ory of Arkansas as those of their friends and brothers who reside in States east Mississippi, and who may wish to join their brothers of the West, *a permanent and which shall, under the most solemn guarantee of the United States, be and remain forever—a home that shall never, in all future time, be embarrassed by having extended d it the lines or placed over it the jurisdiction of a State or Territory, nor be pressed by the extension, in any way, of any of the limits of any existing Territory or State \** The United States agree to possess the Cherokees, and to guarantee it to them er, and that guarantee is hereby solemnly pledged of seven millions of acres of to be bounded as follows. \* \* \*

he treaties with the other civilized tribes are in substance the same, controlling idea being that the Indian was to be given a country h was to be to them a permanent home and be and remain theirs er, undisturbed by contact and association with the white man. Indians knew then and are better informed to-day that the interests e red man and the white, when mingled in the same community, ot co-exist. The red man always suffers by the contact. They are nced that the division of their lands into severalty will result in ing swarms of white men in their midst, will be disastrous to them eople, and hence their protest.

he holding of lands in common and not in severalty has generally e best for the Indian where the two experiments have been tried.

he table subjoined enumerates fourteen bands or tribes upon which experiment of citizenship with tenure in severalty has been tried. of these fourteen there is no evidence in the reports of the Com- sioner of Indian Affairs to show that it has been completely success- n more than one—the Brothertown band, in Wisconsin. The Sioux Flandreau may and probably will ultimately succeed in taking care themselves. For the present they need government help. Of the imies in Indiana, and the Winnebago half-breeds in Minnesota, no ounts are given. Assuming that with them the change was in all ects beneficial, and adding them to the Flandreau Sioux and the thertown Indians, gives a total of four cases of success out of four—the four giving a total of 1,226, out of an aggregate of 13,653—6 cases of success against 12,427 cases of failure.

*List of Indian tribes made citizens in whole or in part, showing the treaty or act of Congress authorizing or recognizing such citizenship, the aggregate number of each tribe or band, and the authority for stating such aggregate number.*

Name of tribe or band.	Location when made citizens.	By what act or treaty made citizens.	Whole number of tribe or band.	Authority for stating number.
Brothertown.....	Wisconsin.....	Act March 3, 1839.....	400	8th Indian Removals, p. 204.*
Stockbridge.....	do.....	Act March 3, 1843.....	328	Indian Office Report for 1845.*
Ojibwas and Chippewas.....	Michigan.....	Treaty July 31, 1855.....	6,115	Indian Office Report for 1875, p. 51.
Chippewas of Saginaw.....	do.....	Treaty August 2, 1855.....	1,580	do.
Wyandotts.....	do.....	Treaty March 1, 1855.....	554	Indian Office Report for 1855—pay-roll, 1854.
Ojibwas of Blanchard's Fork.....	Kansas.....	Treaty June 20, 1862.....	207	Indian Office Report for 1861.
Peorias.....	do.....	Treaties May 20, 1854, and February 23, 1867.....	242	Revised Indian Treaties, pp. 430, 431, and 432.
Pottawatomies.....	do.....	Treaty November 15, 1861.....	2,050	{Indian Office Report for 1877, p. 112—450 as a tribe in Kansas. Territory. Indian Office letter, January 14, 1878—1,600 "citizens" in Indian Territory.
Kickapoos.....	do.....	Treaty June 28, 1862.....	344	Indian Office Report for 1855—pay-roll, 1854.
Delawares.....	do.....	Treaty July 4, 1866.....	902	Indian Office Report for 1855.
Miamies.....	do.....	Act March 31, 1873.....	95	Indian Office Report for 1872, p. 31.
do.....	Indiana.....	Treaty June 5, 1854.....	302	Revision Indian Treaties, p. 516.
Winnebagoes.....	Minnesota.....	Act July 15, 1870.....	180	Indian Office Report for 1871, p. 20.
Sioux of Flandreau.....	Dakota.....	Treaty April 29, 1868.....	364	Indian Office Report for 1877.
Aggregate population of bands made citizens in whole or in part.....			13,653	

\* On page 556 of 7 Statutes at Large the number of Brothertown Indians is stated at 360; of Stockbridge and Munsees, at 349.

These experiments are enough to warn and satisfy the Indians of the danger of the policy of the division of their lands into titles in severalty. And as to these particular tribes it is not necessary to go outside of their own experience to apprise them of the danger now threatening their prosperity, if not their existence. In their memorial of April 22, 1878, they say :

It is the conviction that disastrous consequences would result from the proposed changes, which causes the nearly unanimous opposition to such measures on the part of the Five Nations. Their own experience tells them exactly what the system of allotment and citizenship means. Provisions for that purpose were made in the treaties of 1817 and 1819 with the Cherokees, of 1830 with the Choctaws, and of 1832 with the Creeks. Hundreds of Indians entitled to patents for land under those treaties have never secured a single acre. Many more whose rights were recognized by the government were shamefully wronged by the whites, and have to this day been unable to obtain relief or redress.

This sentiment has been expressed and repeated by them whenever opportunity has been offered.

It must be remembered that with the exception of the treaties made with the Cherokees, Choctaws, and Chickasaws, there is no provision made for the allotment of the Indian lands, and in no event, even in the case of the Cherokees, Choctaws, and Chickasaws, is this to be done except when requested through their national councils.

The proposed legislation in this regard is arbitrary. Their title to their lands has been conceded by the decision of our highest court. In *Holden v. Joy* (17 Wall., 211), the Supreme Court used this language :

Possessed as the United States were of the fee-simple title to the neutral lands, discharged of the right of occupancy by the Osage Indians, it was clearly competent for the proper authorities of the United States to convey the same to the Cherokee Nation. Subsequent acts of the United States show that the stipulations, covenants, and agreements of the treaty in question were regarded by all the departments of the government as creating binding obligations, as fully appears from the fact that they all concurred in carrying the provisions into full effect. (*Minis v. United States*, 15 Pet., 448; *Porterfield v. Clark*, 2 How., 76.)

Appropriations were made for surveys, and surveys were ordered and plats were made, and on the 1st of December, 1838, a patent for the land promised was issued by the President, in full execution of the second and third articles of the treaty. Among other things it is recited in the patent that it is issued in execution of the agreements and stipulations contained in the said several treaties, and that the United States do give and grant unto the Cherokee Nation the two described tracts of land, as surveyed, containing the whole quantity therein mentioned, to have and to hold the same, together with all the rights, privileges, and appurtenances thereto belonging, to the said Cherokee Nation forever, subject to certain conditions therein specified, of which the last one is that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the premises.

These lands therefore belong to these people as absolutely as do those of any citizen or corporation in the land. Their title is perfect, subject only to the ultimate fee of the Government of the United States in the event the Indians "become extinct or abandon the same."

No good reason is assigned for the proposed infraction of the treaties between these Indians and the government, and there is no just ground for the enactment of such arbitrary legislation with reference to property which does not belong to the government.

It is not pretended that these Indians have broken faith or violated their part of the contract. They have been peaceable, law-abiding, and forbearing. Without going to war and thereby involving the government in the sacrifice of life and treasure, they have given up large bodies of valuable lands which now constitute the domain of some of our most prosperous States.

It is true that the forty-third section of the bill provides that this

feature is not to "take effect until the councils of the Indian tribes named acting separately or a general council of delegates acting for all of said nations shall consent," &c.

These Indian nations have given no intimation that they or either of them desire any such legislation. On the other hand they have been here by their authorized delegations for years objecting to and protesting against all such action on the part of Congress. Conscious of their weakness and feeling their dependence, they have, through their memorials presented by their accredited agents, appealed to the conscience and the manhood of this body to spare their existence and pay a decent regard for the compacts of the government. They have sought to touch every generous emotion of a brave nature to induce the strong to spare the weak. That about which they have shown the most concern, that concerning which they have fought the hardest and manifested the greatest signs of distress, has been legislation looking to the allotment of their lands into severalty titles which are now held in common. It would be nearly as pertinent, with what we know of their wishes in this regard, to pass a bill *confiscating* their lands, with a proviso that it should not take effect until they gave their consent, as to pass the present bill with such *proviso*.

It is said by the advocates of the bill that the Indian Territory will be opened to the white man sooner or later, and as it is inevitable that it may as well be done now as at any other time. In this idea we cannot concur. If the treaties of our government with these Indians must be annulled at some future time, let the Congress annulling them bear the odium that must attach to our broken faith. It will be a poor justification in the eyes of the world, and it is illogical and untenable in morals to say that because a great wrong will some day be perpetrated, that therefore we must hasten to commit it ourselves. This is worse than the plea of necessity for the commission of a crime, and could not receive the sanction of any intelligent and civilized body of men.

#### IV.

The provision of the bill which enables the Indian to become a citizen is unnecessary, there being already a law in existence which gives him this right, upon his leaving his tribe and becoming identified as a citizen of some one of the States or Territories. The moment he pays a poll-tax as a resident, making his home under such jurisdiction outside of his tribe, he ceases to belong to the class of "Indians not taxed," and becomes a citizen of the United States, as defined by section 1992 of the Revised Statutes, which says that "all persons born in the United States, and not subject to any foreign power, excluding Indians *not taxed*, are declared to be citizens of the United States."

But if there was no law on the subject, and one is now enacted, it should be free from the objection and the charge that it is violative of our treaties with these Indian tribes.

Article 10 of the Cherokee treaty of 1835 (Revision Indian Treaties, pp. 71, 72), after providing for the permanent investment of the funds of the Cherokee Nation, specifies that the interest on *these funds shall be paid—*

*Annually to such person or persons as shall be authorized and appointed by the Nation. \* \* \* and their receipt shall be a full discharge for the amount paid to them. \* \* \* The council of the Nation may, by giving two years' notice of their intention, withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such manner as they may deem most proper for their interest.*



Again, article 23 of the Cherokee treaty of 1866 (Revision Indian treaties, p. 95) provides:

All funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States, as herein provided for, *shall be invested in the United States registered stocks at their current value, and the interest on all such funds shall be paid semi-annually on the order of the Cherokee Nation; and shall be applied to national, school, and other than purposes.*

The treaties with the other civilized Indians are in substance the same. Their funds are invested for the benefit of the tribes. They are to be paid on the order of the nation to which they belong, and to such person or persons as shall be authorized and appointed by the nation; and they cannot be withdrawn except by the concurrent action of the nation and the President and Senate of the United States, after two years' notice given by the nation. These treaties have been uniformly recognized by Congress in making appropriations, and the good faith of the government is yet pledged to their observance. The consent of the Indian tribes for which provision is made in the bill is not to be expected to this, any more than it may be to the proposition to allot their lands into titles in severalty; for the ink with which the bill was written was scarcely dry before Congress is notified by their accredited representatives of their earnest and unalterable opposition to the measure. What, we would ask, is the necessity or propriety of legislation resting upon this condition precedent, when we are informed beforehand that if the will of these Indian tribes is fairly expressed it is almost a unit against the proposition sought to be enacted into law?

#### V.

It cannot be successfully denied that the encroachments of the white race on this continent upon Indian settlements have been unceasing and persistent from the time of its discovery to the present. Our Indian story has been marked by the Anglo Saxon with an unwarrantable greed for gain and a disregard for the proper method by which such might be accomplished. The Europeans who came to this country brought with them their own maxims, the chief of which was that power was the proper standard of right, and that all opposing forces must yield to this idea in their acquisition of territory, and upon this they have acted.

Our population as a whole have reaped the benefits of the acts which have resulted from this theory, and as a rule have either not thought of the question of its justice, or, having thought of it, have consoled themselves with the idea that the march of civilization must know no bounds to its strides of conquest, and that all means were proper to the end of its accomplishment.

The policy of the Government of the United States toward the Indians has been almost invariably inconsistent. It has recognized the Indians as nations to the extent of making formal treaties with them, under our Constitution, and as often as these treaties have been made they have been broken. The government has from time to time pledged sacred guarantees of good faith, but to have them violated or to permit their violation by its citizens. In but few instances can it be shown as a justification for wrong-doing that the Indians have given just cause for these violated promises. They have yielded to the demands of our government and retreated step by step before the march of its encroachments, until sometimes, driven to desperation, they have temporarily turned upon us and given us battle. They have gone from home to home, from

reservation to reservation, usually without causing our government to make any sacrifice of life or treasure, no matter how great the loss to themselves, and regardless of the unreasonable requirements made by us.

It would have been more honorable and in a braver spirit had this government in the beginning recognized no right in the soil to the aborigines, and declared openly to the world that in the interest of civilization and Christianity this policy would be asserted and maintained; that they had no rights which we were bound to respect, and no interest which they must not surrender to the march of civilization from ocean to ocean. We did not do this, but treated with them as one nation does with another. The question now confronts us, what is our duty to them and what to ourselves in this era of our history?

In 1826 the then Secretary of War indulged in this reflection. Referring to the Indian race, he said :

Shall we go on quietly in a course which, judging from the past, threatens their extinction, while their past sufferings and future prospects so pathetically appeal to our compassion. The responsibility to which I refer is what a nation owes to itself, to its future character in all time to come. For next to the means of self-defense and the blessings of free government stands in point of importance the character of a nation. Its distinguishing characteristics should be justice and moderation. To spare the weak, its brightest ornament. It is therefore a source of the highest gratification that an opportunity is now offered the people of the United States to practice these maxims and give an example of the triumph of liberal principles over that sordid selfishness which has been the fruitful spring of human calamity.

These remarks are as applicable now as they were then. It is the duty of the government to deal honestly with these Indian tribes, to observe treaties made with them, if for no other reason that its own honor may be preserved; for we should never cease to remember that we are dealing with a weak and dependent people. These tribes, when they left their homes east and went west of the Mississippi, were induced by those high in authority amongst us to do so. Indeed, they were induced by the very action of the government to believe that in the event of such removal they would have a home of their own, for all time to come, free from and undisturbed by our laws and customs, and controlled by their own councils, organized upon their own plans. From Monroe to Jackson these promises were repeatedly given and these pledges constantly made. Mr. Monroe, in one of his messages, said :

Experience has clearly demonstrated that in their present state it is impossible to incorporate them—the Indians—in such masses in any form whatever into our system. It has demonstrated with equal certainty that without a timely anticipation of and provisions against the dangers to which they are exposed under causes which it will be difficult, if not impossible, to control, their degradation and extermination will be inevitable. The great object to be accomplished is the removal of these tribes to the territory designated on conditions which shall be satisfactory to themselves and honorable to the United States. This can be done only by conveying to such tribe a good title to an adequate portion of land to which it may consent to remove, and providing for it there a system of internal improvement which shall protect their property from invasion.

And the then Secretary of War said :

One of the greatest evils to which they are now subjected is that incessant pressure of our population. To guard against this evil, so fatal to the race, there ought to be the strongest and most solemn assurance that the country given them should be theirs as a permanent home for themselves and their posterity, without being disturbed by the encroachments of our citizens.

This subject continued to be agitated from time to time, and in December of 1829, President Jackson, in furtherance of the same idea, sent a message to Congress embodying the same thought, and in which appears the following :

As a means of effecting this end, I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any

State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having the distinct control over the portion designated for its own use, that they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes.

Shortly following, the act of May 28, 1830, a part of which is before quoted, was passed. The Indians, accepting in good faith promises of the government, moved westward to secure a home which should be theirs forever, and in which the government pledged them protection. This compact came from the government of its own motion.

Will the government now make good, or will it renounce, its obligations voluntarily made with this weak and defenseless people?

It is the opinion of the minority of this committee that they should be observed, and therefore they oppose the passage of this bill.

H. L. MULBROW.

B. F. MARTIN.

H. L. HUMPHREY.

WM. ALDRICH.

N. MULLER.

GEO. Q. CANNON.

H. Rep. 755, p. 2—2



SAN ANTONIO AND MEXICAN BORDER RAILWAY COMPANY.

JANUARY 28, 1880.—Recommitted to the Committee on Railways and Canals and ordered to be printed.

APRIL 7, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SHELLEY, from the Committee on Railways and Canals, submitted the following

REPORT:

[To accompany bill H. R. 2967.]

*The Committee on Railways and Canals, to whom was referred the bill (H. R. 2967) authorizing the Secretary of War to contract with the San Antonio and Mexican Border Railway Company, respectfully submit the following report:*

The bill under consideration has for its object the construction and equipment of a military railway and telegraph line from San Antonio to Laredo, Tex., on the east side of the Rio Grande. The distance between the points named is about 160 miles.

San Antonio is now the western terminus of the Galveston, Harrisburg and San Antonio Railway; and it is proposed by this bill to construct the military railroad of uniform gauge with the last-named railway; and for this purpose the United States Government is asked to indorse its bonds at the rate of \$12,000 per mile; the bonds to run thirty years, and draw interest at the rate of 4 per cent. *per annum*. The government at all times is to have the preference in the use of said railway and telegraph line; and all money growing out of government service, from the time of its completion, shall be held by the Treasury Department; and the company is required to pay into the Treasury 2 *per centum per annum*, which sum shall be, together with said earnings, used as a sinking fund, with which to redeem the bonds at maturity. The bill also provides that the government shall have a first mortgage on the entire road and its equipment, to secure the payment as above and the redemption of the indorsed bonds at maturity.

The city of San Antonio is now, and for many years has been, the military headquarters for the army of the Rio Grande; and all troops, military supplies, and munitions of war for the protection of our frontier along the Rio Grande are now taken overland by teams along the line of the contemplated railway to a point near Laredo, and from this place north and south to the several military posts.

The distance from Brownsville, near the mouth of the Rio Grande, to El Paso, is about 1,500 miles by the river; and there are now five permanent military posts situated along this frontier, and the erection of two or three other posts is contemplated between Fort Duncan and Fort Quitman.

There are about 4,000 troops employed at these different posts in

protecting the frontier from the marauding bands of Mexicans who have so long infested this country ; and this force is greatly inadequate to the proper security of life and property on that border.

The country lying between San Antonio and Laredo, for many miles in each direction, is of comparative even surface. The soil is fertile and well adapted to agricultural pursuits, and particularly to cattle and sheep raising. The vast area between the Nueces River and the Rio Grande is sparsely populated, and there is only occasionally a sheep or cattle ranch now to be found in that vast domain ; but if properly protected from Mexican raiders and banditti, it would soon become one of the finest grazing districts in the United States.

It is estimated, upon good authority, that 30 per cent. of the cattle raised in this section are stolen by Mexican thieves and Indian marauders. The necessities for a better military protection to our frontier along the Rio Grande are so ably set forth in a report made to this House by the Committee on Military Affairs, accompanying Senate bill 53, that we deem it unnecessary to review them. We append a copy of said report hereto.

The question was asked by your committee, why these military posts cannot be supplied by means of water transportation up the Rio Grande. The answer is, as appeared in proof before us: The river is a sluggish, shallow stream, fordable at almost any point, and in no season of the year is it navigable north of Rio Grande City, a point only 150 miles from its mouth, and only to *that* point in certain seasons of the year. The bar at the mouth of the river is a perpetual impediment to boats of any considerable burden.

The supplies necessary to subsist the army on the Rio Grande are large, and the estimated cost to the government for each soldier is \$1,000 per annum.

The cost of protecting this frontier is now annually between four and five millions of dollars.

The government now pays, as is shown by the Quartermaster's Department, about \$93,000 annually for transportation alone from San Antonio, notwithstanding a large portion of the Army supplies are taken across the country by government teams.

Laredo, Tex., is a flourishing town on the Rio Grande, and is situated about 250 miles from the mouth. The military posts would be more readily accessible from this point than any other on the Rio Grande. We think it is the most convenient point on the boundary for the terminus of a railway, both in a military and commercial point of view.

The advantages accruing to the general government by the construction of this line of railway would, in the opinion of your committee, be many, and much in excess of any contingent liability upon the part of the government.

It would give to the government a quick and cheap transportation of all troops and Army supplies from San Antonio to the Rio Grande.

It would save to the government a large amount of money each year in the actual cost of transportation.

If this road was constructed, at least one-half of the military force could be kept at San Antonio, and, in case of trouble breaking out upon the Mexican border, this reserve could be expeditiously taken to the scene of disturbance, and become more effective than at present in their scattered condition. This alone would, as your committee believe, reduce the expense of that army more than a quarter of a million of dollars annually.

Speedy railway communication to the Rio Grande would operate as a

constant menace to the Mexican raiders, and gradually put an end to their depredations. It would attract stock-growers and actual settlers in large numbers to that region of country, and under the civilizing influence of permanent homes and family associations it would not be many years before this vast country would become as peaceful as our Canadian border.

In support of the views herein expressed, your committee beg leave to refer to the following letters appended to and made a part of this report :

George W. McCrary, Secretary of War, to the Speaker of the House of Representatives, dated May 29, 1878.

M. C. Meigs, Quartermaster-General, to Secretary of War, dated May 22, 1878.

W. T. Sherman, General of the Army, to Hon. C. M. Shelley, dated January 21, 1880.

Stewart Van Vliet, acting Quartermaster-General, to Hon. C. M. Shelley, dated January 27, 1880.

Your committee are satisfied that the sinking fund, paid in as the bill provides, would pay off the bonds at their maturity, and that the government would suffer no loss either in interest or principal; and that the military demands for this road are such that it is both economic and wise for the government to grant the proposed aid in the construction of this railway.

In this report your committee have not considered the commercial importance of this enterprise, except incidentally. We have no doubt, however, that the construction of this line of railway to the Mexican border would soon be followed by a road from Laredo across the country to the city of Mexico, and thus open up to our markets the products of 8,000,000 of people in our sister republic. Between 70 and 80 per cent. of the trade of Mexico is now done with England, France, and Germany. The advantages to this country in a commercial point of view, which might naturally be expected by means of proper railway connections with Mexico, can hardly be estimated. It is, however, safe to say that, instead of this country getting 30 per cent. of the trade of Mexico, we would, by the opening up of these railway facilities, secure to ourselves at least 70 per cent. of such trade.

A better understanding between the people of Mexico and of the United States—a reciprocity of feeling and community of interests which would soon spring up through the means of trade, commerce, and an interchange of products—would very soon place a quietus upon constant border warfare on the Rio Grande. Our military posts would be turned into warehouses, and instead of supporting a standing army there at a cost of \$4,000,000 a year, the custom-houses would yield a good return on our imports.

For these reasons, and many more which might be urged, your committee recommend the passage of the bill.

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[Report No. 88, Forty-sixth Congress, second session.]

Mr. URSON, from the Committee on Military Affairs, submitted the following report (to accompany bill S. 53):

*The Committee on Military Affairs, to which was referred the bill (H. R. 2186) making appropriation for the erection of suitable posts for the protection of the Rio Grande frontier, and Senate bill 53, making appropriation for the purpose of acquiring sites and erecting thereon such military posts on or near the Rio Grande frontier as may be deemed necessary by the Secretary of War for the adequate protection thereof, respectfully submit the following report:*

The bills under consideration are of great national importance, having for their object the maintenance of peace and friendly relations and the promotion of commerce

between the Republic of Mexico and of the United States, and the giving of due and necessary protection to our constantly endangered and long-suffering citizen frontier people by the spoliations, murders, massacres, and inhuman atrocities of harbored and treaty-sheltering banditti, and of the wild and the more dangerous reservation Indian savages.

To determine as to the necessity or policy of making the appropriation contemplated by the bills under consideration, it is important to understand the past, present, and probable future condition of the Rio Grande or Mexican and Indian frontiers, where military posts are proposed to be constructed.

While your committee heartily join and concur in the congratulations of the President in his late annual message to Congress as to the improved and encouraging condition of our affairs upon the Mexican border, wherein he says, "It is a gratification to be able to announce that, through the judicious and energetic action of the military commanders of the two nations on each side of the Rio Grande, under the instructions of their respective governments, raids and depredations have greatly decreased," yet unless the same "judicious and energetic action" is continued, your committee are confident that the troubles with which that border has heretofore been afflicted will be renewed, and may involve the two nations in difficulties which may be destructive of the peaceful relations now existing, and so desirable to be promoted between them.

Although, for a short period, the administration of President Diaz has succeeded in a commendable degree, to enforce its power and authority, and preserve comparative peace throughout the Mexican Republic, the same disturbing and revolutionary elements, though temporarily held in abeyance, exist there to-day, to a dangerous extent, which have existed since her independence as a nation. As her next presidential election draws near, her clans of revolt are organizing, her leaders of banditti are mustering their gangs for plunder and murder. The unmistakable mutterings of an approaching general revolution are heard along the Rio Grande. Our watchful and faithful sentinel upon that border warns us that the revolution has already begun. General Ord, in his report of November 28, 1879, to the adjutant-general Military Division of the Missouri, says:

"The revolution in the frontier States of Mexico has commenced in the State of Chihuahua, and, doubtless, will extend to other States; and raids into the United States, as well as summary demands for troops from this side, to protect American interests on the other, are inevitable. To meet that demand, restrain our reservation Indians, and be prepared to execute orders in regard to raids from Mexico, which Mexican troops, during a revolution, cannot prevent, the troops now in the department are wholly inadequate. I further invite attention to the fact that Victoria's large band has left the Department of the Missouri, and is now roaming in Chihuahua and Coahuila, States immediately on the border of this department. Those Indians doubtless will make their forays, within this command, whenever it suits them to do so."

We are again warned by the very recent news of the breaking out of a revolution in Durango, Mexico.

The fitting language of the President of the United States used towards Mexico in his annual message in 1858 and in 1859, might, ever since then, and now, with slight modification, be appropriately applied to that unfortunate country:

"Mexico has been in a state of constant revolution almost ever since it achieved its independence. One military leader after another has usurped the government in rapid succession; and the various constitutions from time to time adopted have been set at naught almost as soon as proclaimed. The successive governments have afforded no adequate protection either to Mexican citizens or foreign residents against lawless violence. \* \* \*

The truth is that this fine country, blessed with a productive soil and a benign climate, has been reduced by civil dissensions to a condition of almost hopeless anarchy and imbecility. She is entirely destitute of the power to maintain peace upon her own borders or to prevent incursions of banditti into our territory."

As it has been in the past, we have good reason to believe that the change of administration in Mexico will continue, at least in the near future, to be brought about by revolution, and the successful revolutionary leader declared President of the republic.

Mr. Baranda, in discussing a report upon the suspension of certain constitutional guarantees in the Mexican Deputies in 1868, well said:

"Since the independence our unfortunate country has traced a tortuous and bloody road. What is the cause of the present state of our agriculture, our commerce, and our industry? Revolution. What is the reason our country is so unfortunate when it should be so happy? Revolution. What is the pretext of which our enemies at home have availed to beg foreign intervention? Revolution. What is the apparent motive upon which foreign nations have pretended to intervene in our political questions and to subjugate us? Revolution. Always revolution!"

Whenever those revolutions again occur, as we feel justified in predicting they will, we may look for, and wisdom dictates that we should provide against, renewed troubles upon our Mexican border. Notwithstanding an earnest and honest desire of the principal Mexican authorities to prevent and punish lawlessness and crime, and



preserve peace upon their Rio Grande frontier, from the lawless and dangerous character of a large majority of their population residing upon and frequenting that border, and from their internal dissensions and consequent weakness, they have been and will continue to be unable to accomplish that object, without the presence and active co-operation of an effective military force on the part of the United States, permanently stationed and properly quartered upon our side of that border.

The character of the population on the Mexican side of the Rio Grande does not seem to have materially changed since the same was described by General Ord, commanding the Department of Texas, in his examination before the Committee on Foreign Affairs, in 1876, when he said :

"The number of Mexicans who have been driven, by revolution and by their own lawless acts, from Central and Southern Mexico up to the borders of the Rio Grande, probably to escape the result of their offenses, has filled that country with lawless and desperate men. Even the rulers make little or no effort to prevent their committing offenses against the United States, as it would probably destroy their popularity if they did, and would make them odious to the majority of the people. For the same reason—the facility for crossing the river and for escape to the United States—the Mexican troops, who are generally enlisted just as sailors used to be in England, by a sort of press-gang system, take advantage of the opportunity afforded them when brought north to the Rio Grande border, and desert to the United States. That prevents the central government from maintaining a force on the lower Rio Grande to control the desperate and lawless people. \* \* \* The local authorities on the Mexican side, being under the influence of this lawless population which I have described, and being sometimes their leaders, are averse to restoring any property, and I believe they have never yet shown any disposition to do so, no matter how strong the proof of the guilt of the party or the evidence that the property is within their reach. Under these circumstances, and in view of the powerlessness or inability of the Mexican Government to enforce its own laws, or even to protect its own property, we cannot expect them to protect ours, and I consider it not only justifiable, but the duty of the United States authorities to enforce the security of our own border, and to protect the people from invasion. \* \* \* I will also add that it is a matter of great importance on that frontier that troops of the best sort should be stationed there."

Again, in December, 1877, in his examination before the same committee, he says :

"My opinion is, that the bad element of the masses, and not the intelligent element, control Mexican politics, and that the bad element is ready for anything in the shape of war or raiding, or anything that would lead to plunder. \* \* \* The population of the frontier towns is very lawless. The people are more like Arabs in their habits than any other people that I have read of."

Lieutenant-General Sheridan, in his report of October 25, 1878, to the Adjutant-General of the Army, says :

"On the Rio Grande border, troubles, until quite lately, have continued about the same as they have been for years past, and are incident to the character of the population on that border. The Rio Grande is about 1,600 miles in length from El Paso to its mouth, and fordable at almost any place; and Mexicans and Indians committing depredations in Texas have every facility for escaping to the Mexican side."

Col. Edward Hatch, in his report of September 6, 1879, says :

"Probability of our government obtaining a criminal who has fled to any of the frontier Mexican States is slight, should he be of Mexican descent. Not that the Mexican officials are not inclined to do so; it is beyond their control to produce him when the people or his relatives are inclined to shelter or protect him. \* \* \* If necessary, a volume can be obtained from Texas, New Mexico, and Arizona, from settlers of that State and Territories, of similar statements made by the Mexicans, of raids, murders, and robberies upon American soil. The misfortune is that the Indians and robbers are merely common enemies, who take advantage of treaty relations of the two countries, a sparsely populated frontier, on the Mexican side, inadequately protected. Were the United States troops allowed to follow the Indians when in pursuit, or were the Mexican Government strong enough to prevent the occupancy of their mountain regions by Indians, these bands of Indians would be exterminated."

General Ord, in his report of October 1, 1879, says :

"By reason of revolutions the Mexican population along the river is of mongrel character: deserters from the contending forces; Mexican soldiery sent to the border and there disbanded; remnants of bands of wild, raiding, or refugee Indians, who formerly found safety in the deserts and unexplored mountains of Mexico or Texas, and who have gradually learned to trade and mix with the people of its border towns; and smugglers, all go to swell the lawless element."

Again, in his report of December 1, 1879, before referred to, General Ord, says :

"Relative to additional troops, revolutions are likely to occur at any time in all the Mexican States bordering upon Texas. One has just occurred in Chihuahua. These revolutions turn loose bands of outlaws to plunder the defenseless settlers of either

country. Savages whose homes are in the wilds of Mexico, or who may escape from the United States and take refuge there, are continually driving off stock and murdering the people of the Rio Grande Valley and the immense and thinly-settled country adjacent thereto."

There are but six permanent posts situated directly upon the Rio Grande from Brownsville to El Paso, a distance, following the course of the river, of about 1,500 miles, viz:

	Miles.
Fort Brown, distant by land travel from Ringgold .....	117
Ringgold, distant by land travel from Fort McIntosh .....	120
Fort McIntosh, distant by land travel from Fort Duncan .....	115
Fort Duncan, distant by way of intermediate posts from Fort Quitman .....	120
And Fort Bliss, distant by land travel from Fort Quitman .....	84

Col. Edward Hatch, in his report of September 6, 1879, states:

"Referring to General Ord's report, it will be also seen that no troops of the Department of Texas are stationed directly on the Rio Grande River from a station not very distant from Fort Clark, though scouts are extended as far as Paso del Norte, leaving nearly 500 miles of river unguarded."

Three (3) posts are recommended to be built by General Ord between Fort Duncan and Fort Quitman. In his report dated December 1, 1879, made under the resolution of the House adopted June 25, 1879, he says:

"The following appropriations, needed for the construction of posts, &c., I view as necessary to give security and efficient protection to the lives and property of American citizens on the Texas frontier, \* \* \* the cost of building not to exceed \$200,000."

The particular location of the posts in the bill recommended is properly to be left to the direction of the Secretary of War.

The necessity and importance of the construction of the posts in question have been repeatedly called to the attention of Congress. The President, in his annual message of December 3, 1877, says:

"While I do not anticipate an interruption of friendly relations with Mexico, yet I cannot but look with solicitude upon a continuance of border disorders as exposing the two countries to initiations of popular feeling and mischances of action which are naturally unfavorable to complete amity. \* \* \* Disturbances along the Rio Grande, in Texas, to which I have already referred, have rendered necessary the constant employment of a military force in that vicinity. \* \* \* It is believed that this policy (referring to our troops crossing the border) has had the effect to check somewhat these depredations, and that, with a considerable increase of our force upon that frontier, and the establishment of several additional military posts along the Rio Grande, so as more effectually to guard that extensive border, peace may be preserved and the lives and property of our citizens in Texas fully protected."

The Secretary of War, in a letter addressed to the chairman of the Senate Committee on Military Affairs, dated December 1, 1877, says:

"In my opinion, the preservation of peace and order along the boundary between this country and Mexico is a matter of sufficient importance to justify a considerable expenditure of money. Not only is it important to protect the people of the great and rapidly growing State of Texas from depredation, but it is also vastly important that every cause of difficulty between this country and Mexico should be removed, to the end that friendly relations may continue."

The Secretary of War, in a letter to a former chairman of this committee, Hon. H. H. Banning, stated:

"WAR DEPARTMENT,  
Washington City, February 19, 1879.

"SIR: In reply to your favor of yesterday, I have the honor to inclose a report of the General of the Army upon the subject of the establishment of additional military posts in the vicinity of the Rio Grande border. I am of opinion that at least four additional military posts along the line of the Rio Grande should be constructed, and recommend the appropriation of \$200,000 for that purpose. General Ord estimates that at least that sum will be required, and I concur with him in that opinion."

General Ord, in his report of October 1, 1879, says:

"I have eleven additional companies to quarter, and no fit place for that purpose. I need not say that it is very disheartening to the officers to be compelled, through the cold winters and hot summers of Western Texas, to keep their wives and children in tents, shanties, or brush huts, or to have them packed in attics. The want of quarters for so many necessarily crowds all the others, and a glance at the amount of service—40,100 miles of scouts and expeditions, 18,700 miles more than last year—performed by the troops in a country like West Texas, ought to secure to them some comfort after a return from their long and dreary marches over trackless wastes. \* \* \* I have as earnestly as is consistent with propriety, urged the necessity of an appropriation of \$200,000 for four additional posts."

General Sheridan, in his report of October 25, 1878, referring to the services of the army under his command, says:

"No other army in the world has such a difficult line to keep in order, and no army in modern times has had such an amount of work put upon the same number of men."

Under date of March 31, 1879, General Sherman says:

"I certainly will favor any proposition to build suitable posts along the Rio Grande frontier, because it forms a national boundary, and is likely to be permanent."

A bill to appropriate the same amount and for the erection of the posts in question was reported favorably by the Senate Committee on Military Affairs December 11, 1877, and passed the Senate without division, January 31, 1878. A like bill was favorably reported again on the 9th of December, 1879, from the same committee, and was passed without opposition, December 11, 1879, after being amended by making the appropriation for the acquiring of sites and the erection thereon of military posts, &c., with a proviso as to title and taxes.

The report of General Ord of December 1, 1879, hereinbefore referred to, presents another question bearing upon the bills considered of grave importance. He says:

"Connected with the *'peace and safety of the frontier,'* the incursions into Mexico by Indians from the United States should receive the prompt and serious attention of the government. General Trevino, commanding division of the north army of Mexico, by letter of June 11, 1879, invited my attention to the subject. \* \* \*

"If these Indians are so detrimental to the interest of settlers in West Texas, it is not to be expected that they will have more respect for the unprotected settlements on the Mexican frontier. I venture to suggest, they are now not in the same unrestrained condition in which they were when the XI article of the treaty of Guadalupe Hidalgo was abrogated—when they had a country from which to get food. On the contrary, they have been gathered on reservations, so called, and the United States has assumed the responsibility of restraining and providing for them.

"If the government fails to provide for them, it becomes a question how far it may be responsible for the consequences of a failure which compels the Indians to depredate upon the nearest neighbors, including those in Mexico, for the necessities of life.

"I believe a careful scrutiny as to the ration of food issued to each Indian on the Forts Stanton and Sill reservations will establish that it is not enough to sustain life."

Claimants aggregating their demands by the millions, and constantly increasing, for losses of property by reason of the alleged failure of the United States to give protection to her people upon the Indian and Mexican frontiers, are day by day, session by session, and year by year, loudly and persistently knocking at the halls of Congress for payment.

Who can question the soundness or the applicability, to the well-founded claims indicated, of the principle announced by the President in his annual message of 1859, that "the life and property of every American citizen ought to be sacredly protected in every quarter of the world"; and as declared by the Secretary of State, Mr. Evarts, in his letter to Mr. Foster, of August 13, 1878, when, speaking of the inability of Mexico to prevent marauding attacks upon our people, he says:

"This inability may be pleaded as a reason for the failure to check the crimes complained of, but that only makes the stronger the duty of the United States to protect the lives and property of its citizens, for assuredly, if the Government of Mexico cannot do it, that of the United States must, so far as it can.

"The first duty of a government is to protect life and property. This is a paramount obligation. For this governments are instituted, and governments neglecting or failing to perform it become worse than useless. This duty the Government of the United States has determined to perform to the extent of its power toward its citizens on the borders. \* \* \* Protection *in fact* to American lives and property is the sole point upon which the United States is tenacious."

The bill reported is to provide in part the means necessary to enable the government, by its strong arm, to perform the sacred duty of protecting the lives and property of its citizens upon its borders. Can the House, under a plea of carrying out a rigid policy of retrenchment and economy, justify itself in refusing to unite with the other branches of the government in providing these means and in thereby assuming the fearful responsibility of leaving our frontier settlers without adequate security and protection and our troops without shelter, which may result in the loss of much valuable property, in the destruction of many precious lives, in retarding for years the rapid settlement, development, and growth of our vast frontier domain, which would be certain under protection, and in adding to the already alarming amount of "Mexican and Indian depredation claims" other, and perchance still greater, demands of like character, which may eventually ripen into an allowed indebtedness, compared with which the cost of protection will be insignificant?

A due regard for our relations with Mexico also demands protection upon that frontier. By timely and efficient protection only can we expect to preserve friendly relations and a lasting peace between the two republics.

As it is a sacred duty and a solemn obligation, it should be the recognized, deter-

mined, publicly declared and exercised policy of the American Government *that the life and property of every American citizen shall be protected.*

As a duty owing to our citizens and soldiers, and on the grounds of a wise, economical commercial and, international policy, your committee report back Senate bill 53 without amendment, and recommend its passage.

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WAR DEPARTMENT,  
Washington City, May 29, 1878.

The Secretary of War has the honor to transmit to the House of Representatives, for the information of the Committee on Railways and Canals, in response to letters dated May 8th, and May 13th, respectively, from Hon. Gustave Schleicher, of said committee, a copy of report of the chief quartermaster department of Texas, dated January 26, 1878, and a report of the Quartermaster-General, dated May 22, 1878, relative to the construction of a broad-gauge railway from San Antonio, Tex., to Laredo, and also in relation to House bill 4745, "to aid in the construction of the Corpus Christi, San Diego and Rio Grande Railroad." The views of the Quartermaster-General are concurred in by this department. Attention is respectfully invited to the letter of the Quartermaster-General, dated the 23d instant, herewith.

GEO. W. MCCRARY,  
Secretary of War.

THE SPEAKER  
of the House of Representatives.

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QUARTERMASTER-GENERAL'S OFFICE,  
Washington, D. C., May 22, 1878.

SIR: I have the honor to return herewith the communication of the House Committee on Railways and Canals, dated May 8, 1878, requesting of the Secretary of War any information in addition to that already communicated to the committee in reference to the interest of the government in having a railroad built on the Rio Grande border, and as to the comparative advantages of Camargo and Laredo as a terminus for such a railroad, desired by the committee in consideration of H. R. bill 4745, to aid in the construction of the Corpus Christi, San Diego and Rio Grande Railroad from Corpus Christi to Laredo.

The chief quartermaster Department of Texas has made a report, dated January 26, 1878, a copy of which is inclosed. I concur in the views therein expressed.

Any railway from tidewater to the Rio Grande frontier, or penetrating the country along this troubled border, will be an aid of importance to the government in its efforts to put an end to raids and disturbances, which it is plainly the duty of the general government to suppress; for protection to its citizens in life and limb and property is the first duty of a republican government. But I believe that the time required in the present troubled state of peace to repay to the United States Treasury \$870,000 out of saving of expenses of transportation will be long. Should war break out with Mexico, then railroads to the Rio Grande and extending up and down the valley will be simply invaluable. The true base of operations on the Rio Grande frontier is now San Antonio, to which place railroads are already in operation, connecting that base with Galveston, Saint Louis, and with the general railroad system of the country.

The railroad which seems to me most needed by the War Department for communicating with the Rio Grande is one from San Antonio to Laredo. Railroads perpendicular to the frontier are preferable to those parallel to it as being less liable to destruction by hostile expeditions.

Very respectfully, your obedient servant,

M. C. MEIGS,  
Quartermaster-General, Brevet Major-General, U. S. A.

To the honorable the SECRETARY OF WAR.

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HEADQUARTERS ARMY OF THE UNITED STATES,  
Washington, D. C., January 21, 1880.

SIR: I beg to acknowledge the receipt of your letter of January 20, and to say that I certainly do believe the best interests of the United States will be advanced by the building of a railroad from San Antonio, Tex., to Laredo, on the Rio Grande, especially if the citizens of Mexico will take it up and prosecute it as far as Saltillo, inland.

Such a railroad would ultimately connect the railroad system of the United States with that in Mexico.

Railroads are modern civilizers, and are most useful for frontier defense, because they enable us to use our small detachments to better advantage. My judgment is that roads radiating from San Antonio west to Fort Clark, southwest to Laredo, and south to Brazos Santiago and Brownsville, would greatly facilitate the defense of the Rio Grande frontier against the thieving raids which have delayed the settlement of that quarter of Texas.

I prefer not to express any decided opinion as to the best manner for the General Government to aid the construction of such railroads, as that does not properly pertain to my office.

I beg in this connection to inclose a copy of a letter on this very subject which I wrote some days ago to Mr. Hoxie, Palestine, Tex.

With great respect, your obedient servant,

W. T. SHERMAN, *General.*

Hon. C. M. SHELLEY, M. C., *Washington, D. C.*

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WAR DEPARTMENT, QUARTERMASTER-GENERAL'S OFFICE,  
*Washington, D. C., January 27, 1880.*

Sir: I am in receipt of your letter of this date in reference to the advantages of a railroad from San Antonio to Laredo, Texas, and in reply I beg to state that a road between these two points, in my opinion, would be of very great advantage to the government. I concur with the views of General Meigs, Quartermaster-General, given in his letter to the Secretary of War under date of May 22, 1878.

As to my opinion whether the advantages of this road would be sufficient to justify Congress in aiding it, I would state that I have always thought that Congress would be justified in extending judicious aid to roads of national importance which run through a country sparsely populated.

Very respectfully, your obedient servant,

STEWART VAN VLIET,

*Acting Quartermaster-General, Bvt. Major-General, U. S. A.*

Hon. C. M. SHELLEY,  
*Chairman subcommittee, House of Representatives.*

H. Rep. 756—2

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## SAN ANTONIO AND BORDER RAILROAD COMPANY.

DECEMBER 21, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. OSCAR TURNER, from the Committee on Railways and Canals, submitted the following

### VIEWS OF THE MINORITY:

This bill is without a precedent, impolitic, and unconstitutional, in the opinion of a minority of the Committee on Railways and Canals. It creates a liability on the part of the general government of \$12,000 a mile to construct a railroad from San Antonio to Laredo, a distance of 160 miles, in the State of Texas. There is not an acre of land anywhere along the route of this road, or in the State of Texas, belonging to the United States, to be enhanced in value by the building of this road, which has been the justification of bills of this character granting subsidies in *every other case*; and the only argument in favor of it relied upon by the friends of the bill before the committee was that it was a *military necessity*. This the minority of the committee utterly deny. It never has been asked for by the War Department, or any department of this government; and General Joseph E. Johnston, a man familiar with the country through which this road runs, and who is a man of known military experience both as an officer and engineer, testified before the committee that there was no military necessity for this road whatever; that it runs nearly perpendicular to the Mexican boundary, and could only supply one fort, Laredo, where there is only stationed one or two companies of troops, as the report of the Secretary of War shows; and that any military road for the protection of the Mexican frontier ought to run not *perpendicular* but *parallel* to our boundary, so as to supply not only Laredo but the other forts northwest of Laredo on our boundary; which must be apparent to any one, even, as the general said, "one who is not a military engineer." And, as before stated, this road has not been asked for or recommended by any department of this government, but is to benefit certain individuals named in the bill as incorporators, who are incorporated as a railroad company by the laws of Texas, and having no actual enterprise commenced on which they have made any outlay of money, and only exist upon paper. They, and the owners of the lands on this route, are the ones who will receive the great benefit of this road which is asked to be built by a subsidy or charge upon the general government. In addition to this, the International and Great Northern Railroad Company, having for its objective point Laredo, or some point near there on the Rio Grande, and whose present terminus is Austin, Tex., and who have already constructed 520 miles of railroad within the boundary of Texas, costing near \$20,000,000, and all constructed under special charters granted by the State of Texas, as is shown by the statement of Thomas Pearsall,

president of that railroad, and submitted to our committee, which is referred to and made part of this report, marked A, as it does not appear in the report of the majority, state that they will press on their enterprise, and complete it to Laredo as soon as practicable; which will answer any military exigency or necessity, if there was one. Why should we impose a charge upon the government to build this road contemplated by this bill, when this company, with its large capital, informs us that they are about to build it and ask no subsidy? And still, in addition to this, the Corpus Christi, San Diego and Rio Grande Railroad Company have already constructed a railroad from Corpus Christi to within a short distance of Laredo, and it has for its objective points Laredo, Rio Grande City, and Eagle Pass, and doubtless will soon be completed: which will answer all practical purposes in not only supplying Laredo but two other forts on our border, as will be better understood by reference to the map showing the route of the Corpus Christi, San Diego and Rio Grande Railroad, made part of this report, marked B. Besides this, Mr. Lott, president of this road, submitted a written proposition offering to build the road contemplated by this bill within eighteen months, at \$8,000 per mile, and offered to give a bond in penalty of half a million of dollars, with good security, to secure its completion: which written statement is herewith submitted as part of this report, marked C.

For these reasons the undersigned minority is forced to disagree with the majority and report against the passage of this bill, aside from the conviction that no subsidies ought to be granted to local railroads, and that they ought to be left to *private enterprise, justified* and stimulated by commercial wants.

Since the report of the majority was filed, the undersigned minority have learned from reliable source that the aforesaid International and Great Northern Railroad Company have, since they offered the statement marked A and referred to hereinbefore, completed and put in running order a continuation of their road to San Antonio from Austin, and have graded 30 miles of the route beyond Austin, on the route to Laredo, the objective point; thus pushing ahead their private enterprise, and showing that there is no necessity whatever for the passage of this bill by Congress, confirming the minority in the conviction that their views were correct at the time of the action by the committee on this bill. All of which is respectfully submitted, on the part of the undersigned minority, to the House of Representatives of the United States.

OSCAR TURNER.  
NICH'S FORD.

#### A.

*Statement of the International and Great Northern Railroad Company to the Senate and House Committees of Congress on Railroads and Canals, in reference to proposed government aid towards the construction of a railroad from San Antonio, Tex., to the Mexican boundary line, as proposed by bills referred to said committees, and now under consideration.*

The International and Great Northern Railroad Company, a corporation existing under special charters granted by the State of Texas, and having for its objective point, as a western terminus, a point on the Rio Grande at or near Laredo, has constructed, at a cost of nearly \$20,000,000, and is now operating, about 520 miles of railway within said State. Its present western terminus is at Austin, and it is about extending its line to San Antonio, and as far beyond that city westward in the direction of Laredo on the Rio Grande as is warranted by the expected traffic.

This company has been recently reorganized, after foreclosure of its original mortgages. Its funded interest debt is now about \$10,000 per mile of first-mortgage 6 per



cent. bonds, now selling at about par, and \$10,000 per mile of second mortgage income 8 per cent. Bonds, whose market value is about 70 per cent., interest upon which is only paid if earned. Its share capital is \$5,500,000, which cost its original holders par ten years ago, but upon which no dividends have ever been declared or paid. Its market value is about 30 per cent. The company has no floating debt, enjoys excellent credit, and is upon a sound financial basis.

The bills now before the committees, and the statements of the members of the Texas delegations in support of them, plainly indicate that as a private enterprise the construction of a railway from San Antonio to the Rio Grande is not an inviting one to capitalists.

At the same time, it appears to be the opinion of government officers that a great saving to the United States, and a much more effective service for frontier protection, would result from the immediate construction of one or even two lines of railway, connecting the present railroad system with the Mexican boundary.

It is in the power of the committees to obtain exact and disinterested information upon these points from the War, Interior, and Post-Office Departments.

If it shall appear that the cost of the government services, as now conducted, is excessive and inefficient as to warrant government assistance in the construction of the railroad in question, this company ventures to suggest that the form of encouragement stated in the bill now before you—H. R. 3160—is of a character which the United States can extend without incurring expense or liability, calls for no expenditure except for services actually performed after the railroad shall have been completed, and in no manner involves the question of government subsidies in aid of private enterprises. Under such a contract, this company would at once extend its line to the frontier, and complete the same within two years after the passage of such an act.

This company has never entertained the idea of applying to Congress for a subsidy and it is only induced to appear before it in view of the fact that a bill has been introduced and urged upon its attention, asking for direct subsidies, by parties who produce no evidence of their responsibility or credit, and who claim corporate existence only upon paper, and seek from the United States the entire means by which their proposed railroad is to be built.

This company asks in the measure suggested in the bill bearing its name, that if it shall extend its lines in advance of any commercial requirements, and to the manifest advantage of the government, that such a reasonable payment for government work shall be guaranteed to it as will warrant the undertaking, or, at least, limit the risks of it.

Any general act which shall throw the government transportation open upon a minimum basis of payment, to any company constructing the desired line, would be equally acceptable to this company.

Very respectfully,

THOMAS W. PEARSALL,

*President International and Great Northern Railroad Company.*

NEW YORK, February 10, 1880.

C.

WILLARD'S HOTEL, Washington, D. C., March 16, 1880.

Hon. OSCAR TURNER:

DEAR SIR: On behalf of the Corpus Christi, San Diego and Rio Grande Railroad Company, which I represent as its president, I desire to offer the following for your information while considering the bill now under discussion by your committee granting aid for the construction of the San Antonio and Mexican Border Railroad. If your committee shall decide that the road should be built, and that government aid should be extended for that purpose, we ask that the bill now before you have substituted our name and that the amount of guarantee bonds by the government be fixed at \$8,000 in place of \$15,000 per mile and the time for completing such line be limited to eighteen months from passage of the act authorizing such aid. As a guarantee of good faith on our part, if your committee will agree to favorably consider our proposition, on such information from your chairman, we desire to at once file with your committee, to accompany your report, bond for \$500,000 (five hundred thousand dollars), which shall have been approved first by the Secretary of War, for the faithful completion of said contract. With our experience we should deem it unsafe to load an enterprise in that country with fixed interest charges beyond 4 per cent. on \$8,000 per mile. While not pretending that this amount would fully build the road, we do believe that the enterprise will be on a far healthier basis if the balance necessary for its completion is furnished upon the capital stock of the road from private cap-

ital. This our company and its promoters propose doing. As a reason why our te should be accepted, we are on the ground at work and have the facilities for placing large force immediately in the field. We should immediately construct that portion of our main line from San Diego towards Eagle Pass necessary to form a junction with a direct line from San Antonio to Laredo and build both ways at once. Referring to the inclosed map, we state that we will abandon that portion of our road from Alberca to Laredo and carry our traffic over the broad-gauge line between Laredo and our point of junction. By granting us the aid in the manner named, the military headquarters at San Antonio are provided with an additional competitive rail route to the gulf, via Corpus Christi, which would be a very great advantage to the government, besides being placed in rail communication with Fort Duncan, Fort McIntosh, Ringgold Barracks, and San Diego, directly from San Antonio.

I am assured that this combination of two systems will fully meet the requirements of the War Department for all points east of Fort Duncan, and be done for about half the amount proposed to be assumed by the government by the bill now under discussion, which only connects one post, that of Fort McIntosh. We distinctly propose to build the road named the same, with regard to gauge and other requirements as named in the bill. Our State laws give any party the right to build anywhere in the State, by filing acts of incorporation and designating the route, all of which conditions we are prepared to fulfill. Your committee will see that by conveying all the traffic from and to Laredo over the one-third of the line, from point of junction doubly assures the government against any necessary default of interest, as the business will not be divided, and a connection with our present system of narrow-gauge road assures the line a much larger traffic, even if all carried toward the coast, than it could ever get in any other way. Again assuring you that we have the means and ability and the inclination to carry out any agreement we make, I am, respectfully,

Yours, &c.,

U. LOTT.

*President Corpus Christi, San Diego and Rio Grande R. R. Co.*

NOTE.—This circular letter was addressed to each of the committee.

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## WYOMING, MONTANA AND PACIFIC RAILROAD COMPANY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. FORD, from the Committee on Railways and Canals, submitted the following

### REPORT:

[To accompany bill H. R. 4637.]

*The Committee on Railways and Canals, to whom was referred the bill (H. R. 4637) creating the Wyoming, Montana and Pacific Railroad Company, a corporation organized under the laws of the Territory of Wyoming, and for other purposes, respectfully submit the following report:*

The bill under consideration has for its object the construction and equipment of a railroad from Cheyenne, in the Territory of Wyoming, by way of Fort Laramie and Deadwood, through the Territories of Wyoming, Dakota, and Montana, and also a telegraph line along said route. It simply gives the right of way to build the road through the public lands under the charter which the company has acquired under the laws of the Territory of Wyoming. They have the right to build the railroad in the Territory of Wyoming, but they cannot cross the Territory of Montana, and as that Territory has failed to provide a general law under which corporations may be incorporated, there is no way by which this company can acquire this right. Even if they could, it would necessitate a new corporation in Montana and also in Dakota, thus complicating and materially interfering with the business operations of the company.

Congress has the undoubted right to grant a charter for the purposes requested. It interferes with no rights of the people of these Territories and will be to them a great public benefit. The intention is to construct the railroad so as to connect the Deadwood mining region of Dakota with the overland road at Cheyenne and the Colorado lines of traffic. The mining region thus sought to be penetrated, though possessed of vast mineral wealth and rapidly increasing in population, already of considerable numbers, is at present entirely dependent for the large quantity of supplies needed for the support of its people and the development of its mines on wagon transportation and pack animals. This adds greatly to the cost of every article used in that remote region and makes the construction of speedier and cheaper means of communication of the first importance. Recognizing the charter granted by the Territory of Wyoming and conceding to the railroad company the right to mortgage their road in the other Territories in accordance with the provisions of this bill is all the Congressional legislation requested to enable the building of the road.

**2      WYOMING, MONTANA AND PACIFIC RAILROAD COMPANY.**

The rights of the Government of the United States in the transportation of mails, troops, munitions of war, supplies, and public stores are duly secured, as is also the legislative control of the respective portions of the railroad running through the Territories of Wyoming, Montana, and Dakota when these Territories shall become States.

The committee therefore, seeing no objection to the bill, and realizing the great advantage the road will be to the section of the country in which it will be located, report the same back to the House, and recommend its passage with the amendment annexed thereto.

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## CALIFORNIA DETRITUS QUESTION.

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APRIL 7, 1880.—Committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

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Mr. BERRY, from the Committee on Mines and Mining, submitted the following

### REPORT:

[To accompany bill H. R. 5636.]

*The Committee on Mines and Mining, to whom was referred the bill (H. R. 161) relating to detritus washed from the gold mines into the mountain valleys and deposited on the agricul-*

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United States Corps of Engineers, who made an examination as consulting engineer with the State engineer of California.

From these reports and other sources we find a condition of affairs existing there such as exists nowhere else. The gold belt, as it is known in California, is situated on the western slope of the Sierra Nevada Mountains, at an elevation of from one to four thousand feet above the great valley of that State. It is true there is gold found all over the western slope of the mountains, from the valleys to the summit, in greater or less quantities, and mining has been and is now being done throughout the Sierra Nevada; but there is a belt or strip of country varying in width from 40 to 80 miles, which embraces all the principal mines of the State, and in which nearly all the mining has been done, from the discovery of gold to the present time. In the early history of California, the principal mining was what is known as placer, and was confined generally to the rivers, ravines, and flats, where there was no great depth of soil and gravel above the bed-rock. In later years it has been found that there are rich deposits of gold underlying, in many places, great depths of earth. Water is conducted by canals from the higher altitudes of the mountains to the deep gravel deposits, and through smaller canals carried to the nearest elevation above each individual claim. From these elevations the water is conducted down to the mine in iron pipes, and under hydraulic pressure made to do the excavating that in other mining is done by machinery or manual labor.

When water is made to do the excavating, as in the hydraulic pro-

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The committee therefore, seeing no objection to the bill, and realizing the great advantage the road will be to the section of the country in which it will be located, report the same back to the House, and recommend its passage with the amendment annexed thereto.

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Reports 758 and 759 were not printed because the copy was never received at the Government Printing Office.



## CALIFORNIA DETRITUS QUESTION.

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### REPORT:

[To accompany bill H. R. 5636.]

*The Committee on Mines and Mining, to whom was referred the bill (H. R. 161) relating to detritus washed from the gold mines into the mountain streams and carried down into the valleys and deposited on the agricultural lands, in the beds of the navigable rivers and bays of California, have considered the same, and report as follows :*

We have had before us the reports of the recent land commission appointed by Congress, who visited California and made a personal examination of this question during the last summer, and examined many witnesses in relation to it. We also had before us the report of the State engineer of California, who has been, during the last two years, by direction of the laws of that State, making a thorough examination of this question, as well as the report of Lieut. Col. G. H. Mendell, of the United States Corps of Engineers, who made an examination as consulting engineer with the State engineer of California.

From these reports and other sources we find a condition of affairs existing there such as exists nowhere else. The gold belt, as it is known in California, is situated on the western slope of the Sierra Nevada Mountains, at an elevation of from one to four thousand feet above the great valley of that State. It is true there is gold found all over the western slope of the mountains, from the valleys to the summit, in greater or less quantities, and mining has been and is now being done throughout the Sierra Nevada; but there is a belt or strip of country varying in width from 40 to 80 miles, which embraces all the principal mines of the State, and in which nearly all the mining has been done, from the discovery of gold to the present time. In the early history of California, the principal mining was what is known as placer, and was confined generally to the rivers, ravines, and flats, where there was no great depth of soil and gravel above the bed-rock. In later years it has been found that there are rich deposits of gold underlying, in many places, great depths of earth. Water is conducted by canals from the higher altitudes of the mountains to the deep gravel deposits, and through smaller canals carried to the nearest elevation above each individual claim. From these elevations the water is conducted down to the mine in iron pipes, and under hydraulic pressure made to do the excavating that in other mining is done by machinery or manual labor.

When water is made to do the excavating, as in the hydraulic pro-

cess, it is used under a pressure of from one to five hundred feet, and so great is the force, that whole mountains melt away before it. The same water carries the detritus from the claim into the nearest stream or ravine, where it is deposited. When the heavy floods of winter come this loosened earth or detritus is swept to the valleys, river beds, and bays below, or to wherever it comes to rest. United States Engineer Mendell, in his report to the War Department in 1876, page 14, says:

The mining operations not only continue to exist, but their magnitude grows under the application of new and tremendous appliances. The rivers of the upper Sierra Nevada are now encased, and being encased, in wrought-iron pipes, and are discharged with the velocity of hundreds of feet pressure against mountains of gravel. The hills may almost be said to melt away under these enormous blows. Their elements are hurled from their altitudes by a resistless current and borne along to final resting-places in the drainage line of the country on the adjacent plains or in the tidal waters of San Francisco Bay. It must be plain that under these circumstances the preservation of navigable channels become a problem of great magnitude and of special difficulty.

The Yuba, which is one of the tributaries of Feather and Sacramento Rivers, and upon which are located the principal hydraulic mines of California, has been more thoroughly examined by engineers than any other running stream in the State. In the testimony taken by the land commissioner, now before Congress, page 16, we find this statement:

From the beginning of hydraulic mining down to the present time the enormous aggregate of 162,000,000 cubic yards of material has been sluiced out of the hydraulic mines into the Yuba and its tributaries.

In regard to the amount of earth that has been removed by mining operations upon the Yuba and Bear Rivers, Colonel Mendell, in his report for 1880, now before this House, says:

The attempt has been made to estimate the quantity of material in the Yuba and Bear Rivers that have not yet reached the navigation lines, but which lies in the path of the floods, and is therefore liable to be washed farther and farther, in greater or less degree, by every freshet. These deposits are the result of past mining. If no more were added, they are yet capable of doing a great injury to the water-courses below.

The amount lying in the bed of the main Yuba and its branches, above the Yuba mill, is 49,263,200 cubic yards. The amount below the Yuba mill, as far as Marysville, 14,600 acres covered, average depth assumed to be 4 feet, is 94,284,864. Total, 143,561,864.

On the Bear River the estimate is 148,248,000, of which 62,088,000 lies in the plains, and 86,160,000 cubic yards are in the bed of the stream above the foothills. This estimate makes the total amount in the two streams to be 291,799,864 cubic yards. It is not pretended that this estimate is accurate. It could not be so without boring the deposits in thousands of places. It is made from the best information available. Its use, in its imperfect accuracy, is to convey to those who have not the opportunity of seeing it some conception of the enormous dimensions of the phenomenon.

The Yuba having been filled 125 feet at Smartsville, and perhaps 15 feet at Marysville, the slope of the river between these points, a distance of 18 miles, has been increased 110 feet, which is about six feet per mile. This about doubles the original slope.

This tendency to increase the slope of this part of the river brings the gravel lower and lower. This is counteracted to some extent by the great breadth of the stream in the plains at high water. Small gravel is, however, found now in small quantities within three or four miles of Marysville. With the increase of slope under the influence of freshets we must expect this gravel to reach first the Feather, and in due time the Sacramento. Once in either of these streams in considerable quantities, it cannot be expected to move under the influence of the current, or if it did, the effect would be to transfer it to a more objectionable place. In the Feather the pools that formerly alternated with ripples have been filled. It is estimated by the State engineer department that there is a deposit in the Feather River of 40,000,000 cubic yards, and in the Sacramento, below the mouth of the Feather, something like 100,000,000 cubic yards.

A survey of the river in front of the city of Sacramento for a distance of two miles.

in 1854, by authority of the town council, shows, in comparison with our survey of 1878, a mean filling over this distance of 15.2 feet and a maximum filling of 25 feet. This comparison was made by the State engineer.

The State engineer finds the filling of the river at the mouth of the Feather to be three to four feet; at Marysville, on the Feather, to be 13 to 15 feet; at the Yuba Mill, on the Yuba River, near where it emerges from the foothills, in a part of the stream that never was navigable, 68 feet; and at Smartsville, still farther in the foothills, at the outfall of some larger mines, the filling is reported to be 125 feet. The pools in the Feather have also been very much filled. The tendency of the river, under the great loads of material imposed upon it, is to take a grade which tends constantly to get steeper.

Steamboat Slough, which was formerly the shortest and deepest of the two arms of the Sacramento, is reported, on good authority, to have been filled a good deal since the survey of 1878; so much so, that it has been abandoned as the usual route of river boats.

The navigable condition of the lower river has also suffered very much owing to the same cause, but not in proportion to the actual filling. The mean depth has been lessened in a much greater proportion than has the maximum depth.

The filling in the beds of the Sacramento and Feather rivers is mainly sand.

The effect of this great outflow of detritus upon the Feather and Sacramento Rivers, the two navigable streams receiving it, is shown in the extent to which they have filled, as above presented. The State engineer, in his report to the California legislature, says:

In the natural order of things, we may look for the serious impairment of the navigable qualities of the lower portion of the main rivers in the near future. The flow of sands from the supply already in the beds of Yuba, Bear, and American Rivers will bring about this result. (Report 2, page 73.)

From the testimony before the land commission we extract the following to show the effect of this filling:

The Feather and Sacramento Rivers have shoaled in a lesser degree, but still sufficiently to almost destroy their usefulness as highways of commerce. A resurvey of Suisun Bay, recently made under the direction of the United States Coast Survey, has developed the fact that tules are now growing at points where fifteen years ago there were several fathoms of water. The complete filling up of this bay is a mere question of a few short years, after which San Pablo Bay will become the next settling reservoir, to be followed finally by the rapid shoaling of San Francisco Bay, and the eventual destruction of its harbor. These results are sure to follow. The laws of nature make them inevitable, unless, indeed, hydraulic mining be discontinued, or unless some adequate works be devised for arresting the detritus before it reaches the valleys or enters the navigable waters of the State.

In addition to the serious damage already done to the navigation of the Feather and Sacramento Rivers, and the prospect of their ultimate destruction as ways of commerce, and the rapid accumulation of fillings in our bays and harbors as set forth in these reports, the picture would not be complete without giving a few extracts to show the effects of this flow of detritus upon the valley lands adjacent to these streams. See State engineer's report, pages 14 and 15, part 3, which is as follows:

The lands bordering the Feather, Yuba, and Bear Rivers, as well as those adjacent to a number of smaller streams of the Sacramento Valley which have received the flow of detritus, were for the most part naturally very fertile, as all moist alluvial bottom lands are. These lands were in a high state of cultivation, and dotted with prosperous homes, fruitful orchards, and luxuriant fields, but a great change has been wrought in the landscape, one which is not pleasant to contemplate, by the rapid accumulation of the sands. The natural channels of the Yuba and Bear Rivers were first obliterated, and the beds of the streams raised to a level with the top of their former banks. Levees that were thrown up to confine the waters to their accustomed courses only had the effect of causing the beds to rise still higher by the constant deposition of detritus between them until they were finally overtopped by the floods, and the bottom lands were submerged from rim to rim of the adjacent plains with sand and clay sediment to such depth that, in places, orchards, gardens, fields, and dwellings were buried from sight, landmarks were lost, and the course of the devastating flood was marked out by broad commons of slime and sands. Over these the streams now spread at will in many shifting channels, checked only by the dense clumps of willows and other semi-aquatic growth that thrive in submerged territory, and confined between levees now

set long distances apart, generally on the ridges of highland, that formerly marked the boundary of more fertile bottoms.

In the testimony taken by the public land commissioner (see page 16), we find this statement :

The bed of the Yuba River at Marysville is now filled up to the level of the streets of that city, where prior to hydraulic mining there was a well-defined channel of clear water from 20 to 25 feet deep.

Again, on page 15, same report, we find the following :

From accurate surveys made by the State engineer of California, it has been ascertained that over eighteen thousand acres of valley lands on the Yuba River, land that was once the finest bottom land in the State, has been utterly destroyed and buried beneath the mining detritus. So that now this vast area has been transformed into a barren desert of sand alternating with impenetrable jungles of willow swamp: probably as much, if not more, of equally good land has been similarly destroyed on Bear River. Although these lands have been exposed to sunshine for years, they produce not a blade of grass, nothing but willow and kindred semi-aquatic plants that derive their nourishment chiefly from the stratum of water percolating underneath the surface, and not from the soil itself.

There is no hope of a cessation of these evils in the future, because the mines of California are practically inexhaustible. Colonel Mendell, in his report, says :

The quantity of material that remains to be excavated at the mines by hydraulic process cannot be stated with any particular degree of accuracy. This quantity is, however, known to be very large. The quantity remaining in the San Juan ridge, between the South and Middle Yuba, was estimated by James D. Hague in 1876 to be 700,000,000 cubic yards.

This amount is in one small district of but 14 miles in length. When we remember that there are many others, gravel beds, now being worked, of unknown extent, and no doubt hundreds of others that will be discovered hereafter, we may form some idea of future results. Colonel Mendell in his report on this subject continues thus :

There are, so far as is known, no means of estimating the contents of other gravel deposits in the drainage basin of the Sacramento, nor is it necessary for the purposes of this report that this amount be now known. What is fairly known is sufficient to justify a conclusion.

The preceding description enables us to forecast with certainty, in every respect but time, the disasters which impend over the valleys and their water-courses. The great gravel deposits on the flanks of the Sierra Nevada occupy the channels of an ancient drainage system, which was obliterated by an enormous movement of gravel and boulders brought from higher regions, perhaps, by glacial action. New drainage lines were in time excavated by erosion, and these, in turn, are now undergoing a process of obliteration which, if less magnificent in the scale of movement of material than the ancient natural action, is no less certain in its results.

It is hardly necessary here to say anything as to the probable alignment of the third and last drainage system which will replace that which now exists. It is sufficient to appreciate that the result, be what it may, will bring disaster to a large portion of the State.

#### STORAGE OF MINING DETRITUS.

It is, then, of the first importance to know what can be done to remedy or mitigate these evils that have been described. This description has been directed mainly toward showing the injuries to which the rivers are exposed. There are other features that are only secondary in importance. The elevation of the bed raises the flood-line and gives to an ordinary freshet the terrors of a flood.

The riparian strips of country is constantly threatened with overflow, and all the country which depends on the rivers for communication finds the efficiency of navigation impaired.

Relief from the certain increase of evil that must result from a continuance of the present system of mining can be given only by a restraint of the mining detritus by storing in places where it can do little harm. This mass of material must be stored in reservoirs, the best place for which is in the foot-hills of the Sierra Nevada. The reservoirs must be made by placing dams across the beds of the streams into which the material is discharged from the mines.

He then goes on to show that it is feasible to place dams or obstructions across the rivers in the mountains, thus creating reservoirs of sufficient capacity to retain the vast quantities of already loosened material which is now on its way to the lower levels, and which is sufficient to bring destruction with it, and also to store that which will be washed from the mines in the future. He discusses the plans upon which the dams must be constructed, gives their relative height at great length and approximated estimates of cost, as follows:

The following table gives the storage capacity for different heights on the assumption that the material takes a slope of ten feet to the mile. The quantities in this table are used as a basis for an approximate estimate:

*Table showing the quantities of material in dams and quantity that can be impounded at different heights, the present width of bed being assumed at 300 feet and side slopes at 35 degrees.*

No. of dam.	Height.	Total Height.	Stone in dam.	Storage capacity.	Total storage.
	Feet.	Feet.	Cubic yards.	Cubic yards.	
One .....	50	50	32,000	7,537,000	7,537,000
Two .....	25	75	30,777	12,164,000	19,701,000
Three .....	25	100	35,240	16,150,000	35,851,000
Four .....	25	125	39,212	22,740,000	58,591,000
Five .....	25	150	43,783	25,408,000	83,999,000
Six .....	25	175	48,255	27,968,000	111,967,000
Seven .....	25	200	52,726	30,530,000	142,517,000
Eight .....	25	225	57,197	33,150,000	175,667,000
Nine .....	25	250	61,670	35,738,000	211,405,000
.....		300	.....	79,258,000	290,663,000
.....		400	.....	189,626,000	480,289,000
.....		500	.....	231,106,000	711,395,000

In this calculation no allowance is made for the increase of reservoir by tributary streams, nor for extension up stream above the original length assumed, namely, 40,000 feet. If, then, the dimensions turn out to be as here assumed, the storage in the table is much too small. The dimensions assumed are an average given by the State Engineer Department.

The economy and comparative stability of low dams are plain. The 25-foot dams require about two-thirds the quantity of stone of one 50-foot dam, giving the same storage capacity.

The contents of the dam are calculated solid, without allowance for voids, and to each volume 20 per cent. is added, for paving below the dam. In the first three dams, taken as a whole, one cubic yard of stone impounds 242 cubic yards of detritus. For the other dams, one cubic yard of stone impounds about 580 yards.

There is some difficulty in estimating the probable cost of these dams. Good authority places the cost at about \$1 per yard. The material is known, for some dams at least, to be convenient in the hills above. It is proposed in the absence of full information to adopt higher rates, which are assumed as follows:

Average for first three dams, \$1.50 per yard; for remaining dams, \$2.50 per yard. With these rates the cost of the first three dams will be \$222,025, storing 35,700,000 cubic yards, being about three-fifths of a cent per cubic yard stored. For the upper dams, the bed of the stream having taken the slope of ten feet to the mile, the expense becomes reduced, per cubic yard stored, to less than one-half a cent.

The above is as fair a statement of the probable cost of this system as can be predicted from our present information in regard to the Yuba. This river is the principal seat of this kind of mining, and it has received the most attention.

We are not prepared to go into the same kind of calculation as to the American or Bear. There may be some objections in the latter streams to this storage, for the reason that it may interfere with the outfall of the mines. The cost will probably be less in these mines, for the reason that the amount of mining is less than the Yuba.

After discussing the storage system at some length, showing that it is feasible, and that the cost is not out of proportion to the benefits to be attained and the evil averted, he adds:

This system of storage, the cessation of hydraulic mining, and the destruction of the navigable rivers of the interior are the alternatives which present themselves for consideration. It is true that the last alternative is not without qualification, as will be seen further on, when the diversion of some of the tributaries of the Sacramento is considered. It is to be remarked that this diversion is in itself destructive to our

navigable line and that it does not afford relief to the city of Marysville, and to the farming lands adjoining the mining rivers, which are now so seriously threatened.

The foregoing is an outline of the remedial measures that are possible. It is scarcely necessary to add, in view of what has been said, that some measures are indispensable. The only alternative is a cessation of hydraulic mining. Even if this alternative were adopted, it would still be necessary to restrain the many millions of cubic yards of detritus already mined, and now lying in the path of freshets which urge it, year by year, into the lower lines of drainage.

It is in a large part due to the courtesy of the State engineer of California, who has given access to data as yet unpublished, that it has been possible to make this report with any amount of definiteness, either as to the magnitude of the evil, or the cost and probability of success and remedial efforts.

The general features of this phenomenon of choked rivers have been known for some time, but no attempt has before been made to assign a measure to these features. It must be regarded as most unfortunate that these measures had not been taken years ago. Some definite conception of the circumstances would then have been possible, and the evil could have been grappled with in good time.

In speaking of the great urgency for the construction of these dams, and the most suitable season of the year to perform the labor economically, the same report says:

If this description of the existing state of affairs is at all adequate, it will not be doubted that the necessity for these works is urgent. It is strongly recommended that these dams be built during the coming summer. The proper time is during low water, which extends from August to October. During this period there is little water in these rivers, except that which comes from the ravines, and consequently there will be little difficulty due to the presence of a strong current.

The problem becomes more serious by delay.

The statement of the case which has been given fails of its object if it does not convey a most serious view of the urgency of the question. It is respectfully suggested that this question be brought to the attention of Congress as soon as practicable.

Reasons have been given why a full estimate of cost cannot now be made. A great part of the data has come from investigation outside of this office. Our information must be admitted to be incomplete, but it is sufficient to justify a recommendation for an appropriation by Congress.

It is, therefore, respectfully recommended that an appropriation of \$250,000 be asked of Congress, to be expended during the present year in the construction of storage reservoirs for mining detritus on the tributaries of the Sacramento River, and in a further study of this question.

I am, very respectfully, your obedient servant,

G. H. MENDELL,  
*Lieutenant-Colonel of Engineers.*

The State engineer of California, in his report to the legislature, part 2, page 74, speaking of the urgency of prompt action in the matter, says:

The restraint of the sands in the cañons, and in the deposits along and in the tributary streams below these cañons, admits of no delay. It is the first objective point in the restoration and improvement of the carrying capacity of the valley streams. If this desirable result was measurably secure; if the flow of sands into the Feather and Sacramento Rivers was stopped, the natural action of the rivers, relieved in a degree from the load they now have to carry, would be to excavate their beds, and gradually to work back to the regimen of twenty years ago.

In reporting upon this measure, the committee deemed it proper to present to the House the existing condition of affairs, and the urgent necessity for some remedial measures, as near in the language of the official reports laid before Congress as was consistent with brevity. There can be no question as to the fact that great impairment and injury has already been done to the navigation of Feather and Sacramento Rivers. That large sections of the finest agricultural lands, in a high state of cultivation, have been destroyed; that still larger portions of the great Sacramento Valley, with cities and towns, are jeopardized, and unless protected must soon be overtaken by destruction; that river channels have been obliterated; that extensive deposits are accumulating in Sui-

sun, San Pablo, and San Francisco Bays; that there are vast tracts of mineral government lands that will yield a large profit when worked by the hydraulic process; that large quantities of detritus have already accumulated in the mountains, cañons, and gorges from mining operations, which will be swept into the valleys and rivers at every freshet, and there can be no question but that remedial measures must be adopted, or that these evils will increase and intensify; that the complete destruction of the navigation of Feather and Sacramento Rivers is in the near future; that the reduction of the tidal area of San Francisco Bay is rapidly taking place, which will reduce the depth of water upon the bar at the entrance of the Golden Gate.

These are all established facts, about which there can be no question. The only question, then, to be answered is, to what extent should the government extend its aid to repair the present and to avert the future injury to navigation. We believe the limit of this aid should be measured by the necessities of the case. Your committee herewith present a substitute, which provides that the Secretary of War shall select two competent engineers from the Army, and that the Secretary of the Treasury shall select one competent engineer from the Coast Survey; the engineers so designated shall constitute a commission, who shall visit California and institute such practical and scientific examination of mining operations in their relations to navigation, agricultural lands, and property along the streams of that State, affected by the deposits from mining operations, as they may deem necessary, to devise some practicable and feasible method by which further injury may be averted. They are directed to report as early as practicable to the War Department the results of their examinations, together with specifications and estimates of such plans of relief or protection as may be developed; and the Secretary of War is directed to transmit said report without delay to Congress.

The bill appropriates \$250,000, to be expended under the direction of the War Department in carrying out these plans and in a further examination of this subject. The provisions of this substitute are in accord with the recommendation of Lieutenant-Colonel Mendell, United States engineer, who has examined the question and made quite an elaborate report to the War Department, many extracts from which are herein presented.

In view of the fact that the State of California has caused a thorough examination of this subject, and the best engineering talent of that State has reported that it is feasible to restrain the further flow of detritus from mining operations to a degree sufficient to save from destruction the navigable waters of that State by the construction of reservoirs in the mountain gorges, and have presented plans, specifications, and approximate estimates of cost of the proposed works to the legislature of that State; and in view of the further fact that a United States engineer has also examined the subject and reported to the War Department that great injury has already been done to the navigation of some of the rivers in California, and that destruction is inevitable without prompt action, and has recommended that the matter be laid before Congress and that an appropriation be asked, to be expended the coming summer in the construction of works of protection, your committee have therefore deemed the subject of sufficient importance to demand government aid, and herewith present a substitute, and recommend the passage of the same.

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## PUBLIC BUILDING AT HANNIBAL, MO.

APRIL 7, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SHALLENBERGER, from the Committee on Public Buildings and Grounds, submitted the following

### REPORT:

[To accompany bill H. R. 2150.]

*The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 2150) to provide for the erection of a public building in the city of Hannibal, in the State of Missouri, having had the same under consideration, respectfully report:*

That from information before your committee, certified to by the mayor and city council, it appears that the city of Hannibal is located on the Mississippi River, about 120 miles north of Saint Louis and about 60 miles south of Keokuk, Iowa. It contained, by the census of 1870, between ten and eleven thousand inhabitants. Its present population is estimated at over 16,000. The city is a railroad center and distributing point of considerable importance. Seven different railways start from or pass through the city. The local business and shipping trade are large. The lumber business alone, in the past year, shows receipts amounting to 13,628 car loads. Two hundred thousand barrels salt, 1,250,000 barrels oil, 230,000 barrels white lime, 200,000 barrels flour were produced and distributed, and some 25,000 hogs were slaughtered and packed within the past year. The city is enterprising and progressive; is lighted by gas; has water-works, telephone exchange, street railway, fire department, sufficient police system, &c.

The importance of local business interests is perhaps best shown in post-office returns. Post-office receipts (total), as shown by postmaster, were as follows:

In 1877, including postage, money orders, &c .....	\$70,159 69
In 1878, including postage, money orders, &c .....	80,224 65
In 1879, including postage, money orders, &c .....	89,167 91

The rental paid by government for post-office is only \$400. It is represented that a bonus in addition to this sum is raised by citizens to secure a given location, and that the story above the post-office is occupied by private families, disturbing public business and endangering public property. The same official represents that the room is wholly inadequate, 18 by 60 feet, and has been burglarized twice in the past year. Twelve mail-trains arrive and thirteen depart daily. A private building adequate, he thinks, would rent for \$1,200 to \$1,500.

The deputy collector of internal revenue reports that since the reve-

nue laws have been in operation he has collected at his office in Hannibal about four and a quarter million dollars.

No Federal court is at present held at Hannibal. A bill is now pending in the Judiciary Committee to authorize it.

In view of the above, your committee think the interests of the public service will justify a plain, substantial building, and report back the bill favorably with amendment.

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## PACIFIC RAILROAD SINKING-FUND ACT.

APRIL 7, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. McLANE, from the Committee on the Pacific Railroad, submitted the following

### REPORT:

[To accompany bill H. R. 5637.]

*The Committee on the Pacific Railroad, to whom was referred the bill (H. R. 5637) to alter and amend the sinking-fund act approved May 7, 1878, respectfully submit the accompanying bill as a substitute therefor, together with the following report:*

This bill, which has for its object to alter and amend the sinking-fund act of May 7, 1878, commonly known as the "Thurman act," authorizes the Secretary of the Treasury to invest the sinking fund of the Union and Central Pacific Companies in United States bonds, other than 5 per cents, or in the first-mortgage bonds of the companies, as he may prefer; second, by extending the time for the settlement necessary to ascertain the amount payable by the companies from one month, as it is now, to three months; third, to make the settlements and payments semi-annual, instead of annual; and, fourth, to authorize the Secretary of the Treasury to transfer moneys now in the Treasury, and due said companies, to the sinking-fund.

As to the first, it is urged that the first-mortgage bonds of the companies, which pay 6 per cent., are a far better investment, both for the government and the companies; as to the second, one month is too short a time wherein to settle the accounts of these companies for the year preceding December 31; as to the third, that semi-annual settlements and payments can be more readily made, and will accommodate themselves to the United States fiscal year; and as to the fourth, that the moneys now in the Treasury cannot be used for the purpose unless the restrictive law of 1873 is repealed so far as these companies are concerned.

The act further provides in its fourth section to extend the act as well as the act of which it is amendatory to all persons and corporations into whose possession any of these roads to which the act applies may lawfully come by purchase or consolidation, and in its fifth section extends the provisions of the act and the act of which it is amendatory to the Kansas Pacific, the Central Branch Union Pacific, and the Sioux City and Pacific Railroad Companies.

In reference to the investment of moneys due to the sinking fund in the first-mortgage bonds of the companies, your committee respectfully refer to the letter of the Secretary of the Treasury, a copy of which is herewith reported.

The propriety and necessity of extending the sinking-fund act to all

new corporations that may embrace those now in existence, to which the said act refers, needs no comment. The three roads to which the provisions of the said act are extended were created by the same acts which incorporated the Central and the Union Pacific Railroad Companies, to which the provisions of the said sinking-fund act were originally applied, and constitute with the said roads the system of money-subsidized roads, as created by the act of 1862, and the acts amendatory thereto.

Your committee, therefore, report the accompanying bill for favorable consideration at the earliest possible day, and recommend its passage.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY.

*Washington, D. C., February 21, 1878.*

SIR: The third section of the act of Congress, approved May 7, 1878, entitled "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act," provides "that there shall be established in the Treasury of the United States a sinking fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States. \* \* \*"

The only investment yet made under the provisions of this act has been made in the 5 per centum bonds of 1881, as follows: On account of the sinking fund, Union Pacific Railroad Company, principal \$59,500, and premium, \$3,049.37; and on account of sinking fund, Central Pacific Railway Company, principal, \$36,700, and premium \$1,880.88.

It is very probable that this loan will be called in and funded into 4 per cent. bonds within one year after it is due. If, therefore, this loan is redeemed by May 1, 1882, this investment would only realize to the fund 3 $\frac{2}{3}$  per cent. per annum.

The advantage to the fund of investments in 4 per cent. bonds at par is apparent, unless the market price of the 4 $\frac{1}{2}$  per cent. bonds falls below 105.03, the 5 per cent. bonds below 103.02, and currency sixes below 126.44. I have therefore to inform Congress, in accordance with the requirements of the statute, that investments will hereafter be made in the 4 or 4 $\frac{1}{2}$  per cent. bonds or the currency sixes, as may be most advantageous to the fund, having regard to the length of time the investment is to continue.

As the interests of the United States and the railroad companies in this fund are reciprocal, I would recommend that the law be so modified as to authorize the Secretary of the Treasury, at his discretion, to invest such amounts as may be from time to time payable to this fund in the first-mortgage bonds of the respective roads as authorized by the tenth section of the act of July 2, 1864 (13 Statutes, 358).

This will give the roads a better rate of interest on the fund without detriment to the United States.

The United States as a deferred creditor is interested to the extent of the preferred bonds.

The ninth section of the act of May 7, 1878, provides that all sums required to be paid into the sinking fund under this act, or under the acts hereinbefore referred to, are made a lien upon all the property and franchises of the roads, "subject to any lawfully prior and paramount mortgage, lien, or claim thereon." As these bonds are a prior lien on this fund, better investment for the fund itself cannot be obtained, so long as they can be purchased below the market rate of the currency sixes.

Very respectfully,

JOHN SHERMAN,  
*Secretary.*

Hon. SAMUEL J. RANDALL,  
*Speaker of the House of Representatives.*

## REORGANIZATION OF THE MILITIA.

APRIL 7, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. SCALES, from the Committee on the Militia, submitted the following

### REPORT:

[To accompany bill H. R. 5633.]

*The Committee on the Militia, to whom have been referred the bills (H. R. 992, H. R. 4889, and H. R. 4979) "to reorganize and discipline the militia of the United States," respectfully report :*

That no material change has been made in the militia law since its original enactment in 1792. The provisions of the law have become obsolete and impracticable, and for many years there has been no pretence of regarding them or attempt to enforce them. Believing, therefore, that there can be no dissent to the necessity of some action, the committee has endeavored to frame a bill which, without changing the nature of the long established relations between the general government and the militia of the States, might replace provisions that have become obsolete or that experience have proven impracticable by others that would make the militia an efficient and important factor in the economy of national defense. In this view the committee report the accompanying bill as a substitute for the several bills referred to them and recommend its passage.

The committee feel that it should be sufficient for them to submit this bill without further comment than was made on the subject by Washington, when he said to Congress that "it is unnecessary to offer arguments or recommendations of a measure on which the honor, safety, and well-being of our country so evidently and so essentially depend." Nevertheless, as the subject is one that has occupied the attention of Congress since the formation of our government, we are constrained to add a brief review of the questions involved, in the hope that it may assist in their intelligent consideration.

The purpose and opinion of the founders of our government is unequivocally expressed in the second amendment to the Constitution, which declares, "A well-regulated militia being necessary to the security of a free State." The unvaried agreement of all subsequent writers and statesmen with this assertion might well cause us to view with some alarm the fact that all attempts to secure an efficient militia have hitherto signally failed. While all agree that the perpetuity of a republican form of government depends on maintaining a well-regulated militia, the fact has been demonstrated that under no other form of government is it so difficult, owing to the indisposition of the people to submit to the enforcement of military duty in time of peace.

Washington, in his annual message to Congress in 1794, said : "The

devising and establishing of a well-regulated militia would be a genuine source of legislative honor, and a perfect title to public gratitude." The wisdom of this assertion has been proven by the subsequent failure of all attempts at legislation. Nevertheless your committee are convinced that the solution of the difficulties is now easy, not through any superior wisdom of our own, but because time and experience have solved the difficulties for us. This solution we conceive to be to substitute a volunteer militia in place of enforced militia duty, believing that our population has reached such a number that the volunteer militia of the States will be sufficiently large and efficient for all the purposes for which militia can or ever should be used.

The committee, deeming that it may be interesting and perhaps aid in considering the propositions submitted, preface their own recommendations with the following brief outline of the

#### HISTORY OF THE MILITIA LAW :

No subject, unless it be that of finance, has so long and so often engaged the attention of Congress as that of the militia, and on none have more able and exhaustive reports been written by those whose slightest utterances we have been taught to honor and respect. The records of Congress are filled with messages from Presidents, reports of executive officers, reports of committees of both houses of Congress, and with plans and bills for the improvement and organization of the militia, to attempt even a brief outline of which would far exceed the proper limits of this report. We cannot, therefore, do more than give a brief outline of the most salient features in the history of the subject.

On July 18, 1775, the Continental Congress passed a series of resolutions recommending "to the inhabitants of all the United English Colonies in North America that all able bodied effective men between sixteen and fifty years of age in each colony immediately form themselves into regular companies of militia." One of these resolutions is particularly suggestive, as it contains the germ of the volunteer system which has now grown to such proportions that we have been led to recommend its recognition, and is as follows :

That one-fourth part of the militia in every colony be selected for minute men, of such persons as are willing to enter into the necessary service, \* \* \* and as these minute men may eventually be called to action before the whole body of the militia are sufficiently trained, it is recommended that a more particular and diligent attention be paid to their instruction in military discipline.

On the formation of the Federal Government one of the earliest acts of the first House of Representatives, in 1789, was the appointment of a committee to prepare a bill to organize the militia. The session adjourned before the committee made a report, but at the following session, in 1790, General Knox, Secretary of War, submitted his celebrated plan for organizing the militia, accompanying it by a letter of transmittal which is remarkable for its terse, striking, and strong arguments. His plan, in brief, was that every boy on arriving at the age of eighteen years should be enrolled in the cadet corps of militia and be obliged to serve in camp of instruction thirty days in each of first two years and ten days the third year, and that no person arriving at the age of twenty-one years should be entitled to exercise the rights of a citizen unless he could produce his certificate of having so served ; all citizens between twenty-one and forty-five years of age were to be enrolled in the main corps of militia and be obliged to drill four days in each year ; and between forty-five and sixty years of age to be enrolled in the reserve corps,

which should be assembled twice in each year for inspection of arms. Under his plan the general government was to furnish uniform, arms, equipments, and bear all the expenses of the camps of instruction. The features of General Knox's plan were embodied in a bill by a committee of the House of Representatives, and the subject was discussed through the two succeeding sessions until all of its original features were changed or modified, and the act of May 8, 1792, finally agreed on and enacted. As this is the law still in force, we reserve a detailed explanation of its provisions, and simply state here that its main feature was that every citizen between eighteen and forty-five years of age shall be enrolled in the militia and shall arm and equip himself at his individual expense. This law was found to be so crude and inadequate that it became the subject of criticism immediately after its passage, and of efforts to amend it which have continued to the present time. As well expressed by Washington, after the attempt was made to put it in practical operation, it "exhibited such striking defects, as could not have been supplied but by the zeal of our citizens"; and in his annual messages to each succeeding session of Congress, during his two terms of office, he urged that the evident defects of the law be remedied. In the session succeeding the enactment of the law an effort was made to repeal the provision requiring every citizen to arm himself. In the next following session, in 1794, a bill was reported by a committee of the House of Representatives to organize a "*select corps*" of militia, to be armed and equipped by the general government, and paid for service in annual camps of instruction. Different propositions, having in view these two changes in the militia system, were discussed in successive sessions until 1798, when the threatening condition of our relations with France culminated in the formation of a provisional army and other warlike preparations that temporarily suspended consideration of the militia system. Our troubles with France having been amicably settled, the militia question again assumed prominence, and Jefferson, in his annual messages to Congress, implored them to take some action. It was chiefly through his earnest efforts that the law of April 23, 1803 (section 1661 revised Statutes) was passed, making a permanent appropriation of \$500,000 a year to provide arms and equipments for the militia. Somewhat curiously, however, the requirement of the old law that every citizen should arm and equip himself was not repealed, and still remains in statute. As the country was rapidly increasing in population the uselessness of requiring active militia duty from the whole body of citizens became more apparent, and was felt to be an unnecessary burden. Jefferson, in his annual message in 1805, recommended that the militia be classified according to ages, and thought that those from eighteen to twenty-six years of age would form a sufficiently large body to be subjected to any duty in time of peace. This proposition was taken up by Congress, and in various forms was the subject of debate in successive sessions, until the war of 1812 put an end to the discussion without any result having been reached. Madison was almost as urgent in his appeals to Congress to amend the militia law as Jefferson had been. In his annual message in 1810 he advanced a new proposition in the suggestion that the commissioned and non-commissioned officers of the militia should be assembled in annual camps of instruction at the expense of the general government; and in his last annual message, in 1816, he earnestly recommended a reorganization of the militia, and classifying them according to age.

Prompted by the recommendations of Madison, the Fourteenth Congress, in 1816, directed the Secretary of War to prepare and report a plan for the organization of the militia. Secretary of War Graham reported to the following session, recommending that the militia be divided into three classes according to age, and that the two younger classes be required to assemble annually in camps of instruction and be armed, equipped, and subsisted at the expense of the general government. This report was referred to a committee of which General Harrison (then a Representative from Ohio) was chairman. Harrison took a deep interest in the subject, and presented a careful report. He deemed it essential that the whole body of the people should be instructed in military matters, and for this purpose recommended that military instruction be made a branch of education in every school in the country. Believing that it would entail too great an expenditure of time and money to subject the whole enrolled militia to drill and military training, he revived the propositions first made by President Madison, and recommended that the officers and sergeants be assembled annually in camps of instruction, be paid for their time, and be thoroughly drilled and instructed at the expense of the general government, which he estimated would amount to about one and a half million dollars a year. Harrison continued the agitation of the subject while he remained in Congress, and made reports in 1818 and 1819 urging action.

Various bills and propositions were introduced and discussed from 1819 to 1825, most of them, however, agreeing in classifying the militia so that only a small portion of it should be subject to any duty in time of peace, and that this portion should be maintained at the expense of the general government.

In 1825 Secretary of War Barbour addressed a circular letter to the governors of all the States and to many citizens most prominent in military and civil life, setting forth that it had long been apparent that some change in the militia law was necessary, and asking their views on the subject. He then convened a board composed of some of the most distinguished officers of the Army and Militia for the purpose of considering the question, and submitted to them the voluminous correspondence that had resulted from his circular letter. It is worthy of note that the president of this board was Winfield Scott, then a major-general in the Army, and that Zachary Taylor, then a lieutenant colonel of artillery, was one of the members. The Militia were represented on the board by General Cadwalader of Pennsylvania, General Sumner of Massachusetts, and General Daniel of North Carolina.

The report of this board (S. Docs., second session Nineteenth Congress, vol. 1), together with all the papers and correspondence connected with it, was transmitted to Congress by the President. The board reported that they considered the primary defect of the militia law to be in the excess of numbers which it held to service. They recommended that a select corps of militia be formed, to consist in each State of one brigade for every Congressional Representative, and that the officers of this select militia be assembled in camps of instruction ten days in each year, and be paid by the general government for their time and traveling expenses. They also recommended that the office of adjutant-general of militia be created, and that, on the application of State executives, the United States should furnish officers to instruct the annual camps.

From 1826 to 1835 the unanimity of opinion as to the absolute necessity of some change in the militia law was only equaled by the diversity of opinion as to what that change be, and resulted in unproductive discussion of numerous bills and propositions that were submitted.



In 1835 President Jackson, in his annual message, urged Congress, in his usual forcible style, to give their attention to the subject, and among other things recommended that volunteer organizations be encouraged and inducements held out for their formation. The Secretary of War (General Cass), in his annual report, gave his views on the subject, and represented the necessity of some legislation. Urgent effort was made in Congress to secure agreement to some plan, but without success.

In 1840 Secretary of War Poinsett submitted a plan to Congress. Apparently despairing of securing agreement to any plan that simply changed and perpetuated the existing system, he proposed a radical reform, that stretched the constitutional powers of the general government to such an extent as to cause opposition to it on that ground. His plan was to divide the militia into three classes—the active, reserve, and mass. The active militia to consist of 100,000 men, apportioned to the respective States, and each State to be required to keep its quota filled at all times, either by voluntary enlistment or draft. One-fourth of the active militia to go out of service annually and be enrolled in the reserve corps. The mass of the militia not to be subject to any duty in time of peace. He proposed that Congress should by law authorize the President to order the active militia into the service and pay of the United States for thirty days in each year for the purpose of placing them in camps of instruction.

This appears to have been the last decided attempt to save the decaying system from dissolution, with the exception of an effort in 1846, when a bill was reported to remedy the excess of number of the militia by limiting the enrollment in time of peace to those between twenty-one and thirty years of age, who should be formed into a legion of active militia in each State, the officers of which should serve annually in camps of instruction at the expense of the general government.

The militia system, by this time, was virtually dead; during the many years devoted to debating a remedy for its defects it had gradually sunk, until it no longer existed except on the statute-book. In the mean-time, in all the States, by a process of "natural selection," there had sprung up volunteer organizations of militia, and the States, by fostering and encouraging them, had supplied the deficiencies of the general law. These volunteer organizations made possible and gave efficiency to that splendid body of volunteers whose soldierly qualities and deeds of valor in the Mexican war gave such renown to our arms. After that war still greater interest was manifested in the volunteer militia; the States devoted to them the meager supply of arms and equipments obtained annually from the general government, which in many instances they supplemented by large appropriations of their own, and the volunteer militia continued to increase in numbers and efficiency until the breaking out of the "war of the rebellion." Of that fearful struggle it is safe to say that the magnificent armies which were so quickly formed on both sides were only made possible by the fact that the efforts of regularly educated officers in drilling and disciplining them were supplemented by those who had received a partial military training in the volunteer militia.

Just before the war, in 1860, an earnest effort was made in the House of Representatives to increase the annual appropriation for furnishing arms and equipments to the militia. In urging the measure, Mr. Valandigham reviewed the militia system and spoke of the volunteer system replacing it, asserting that they would "in time become the National Guard of America."

After the close of the "war of the rebellion" another most decided effort was made, both in the House and Senate, to reorganize the militia,

or rather to create a new militia system, and several bills for that purpose were introduced in the Thirty-ninth Congress. Although none of these bills were passed, they contained provisions that are interesting and suggestive, and some that went to the extreme limit, if they did not go beyond the constitutional power of Congress in the premises. It was, however, a purpose common to all the bills to form an active volunteer militia, and that seemed to be accepted as the true solution of the militia question.

This closes the history of the efforts to achieve a satisfactory militia system, with the exception of an interesting report by the Chief of Ordnance (S. Ex. Doc. 22, second session Forty-fifth Congress), and a report by the Senate Committee on Military Affairs (S. Report 56, second session Forty-fifth Congress), both recommending that the permanent appropriation for providing arms and equipments for the militia be increased to \$1,000,000 a year.

Whether your committee have gleaned any wisdom from their examination of the history of this question which will make their solution of it worthy of your attention, or whether our efforts will simply mark another era in the history of futile attempts to secure legislation on this important subject, remains to be seen.

Before proceeding to present our own conclusions and views on the subject, we deem it desirable that its premises should be thoroughly understood, and we, therefore, first present brief recitals of the details of the present law, of the details of proposed law, and of the leading points of difference between them, in the hope that they may enable an intelligent consideration of the matter.

#### DETAILS OF PRESENT LAW.

Sections 1625, 1626, 1627 for the enrollment of the militia are provided for in section 1 of proposed bill.

Section 1628, requiring every citizen to arm and equip himself, is obsolete.

Section 1629, giving list of persons exempt from militia duty, is unnecessary, as proposed bill provides solely for a volunteer militia. If reserve militia is ever called into service it would only be by act of Congress, which would specify the persons to be exempt from the call.

Sections 1630, 1631, 1632, giving in detail the organization of the militia, are provided for by the general provision in section 4 of proposed bill that their organization shall conform as closely as practicable to that prescribed for the Regular Army.

Section 1633, requiring officers to provide colors and music, is obsolete.

Section 1634, that there be an adjutant-general in each State, is provided for in section 11 of proposed bill.

Section 1635, prescribing what reports officers of the militia shall make, is omitted in proposed bill as a matter more proper to be regulated by the States.

Section 1636, requiring an annual report to be made by the adjutant-general of each State, is provided for in section 11 of proposed bill.

Section 1637, that system of discipline and field exercise shall be the same as in the Regular Army, is retained with verbal alterations as section 5 of proposed bill.

Section 1638, regulating seniority of commissioned officers of same rank, is retained as section 22 of proposed bill, with verbal alterations, making it applicable only when militia is in the service of the United States.

Section 1639, that militia wounded in service shall be cared for at public expense, is provided for in general provisions of section 19 of proposed bill.

Section 1640, prescribing duties of brigade inspectors is obsolete. Provision for inspection of the militia is made in section 14 of proposed bill.

Section 1641, recognizing special privileges accorded by any of the States to existing organizations, is retained as section 6 of proposed bill.

Section 1642, authorizing President to order militia into service of the United States, is provided for in section 19 of proposed bill, and, in accordance with the theory of the bill, limited to the active or volunteer militia.

Section 1643, that the President, in calling out the militia, shall apportion it among the States, is omitted in proposed bill.

Section 1644, that militia in service shall be governed same as Regular Army, is provided for in general provisions of section 19 of proposed bill.

Sections 1645, 1646, 1647, prescribing how militia shall be organized when called into service, is provided for in section 4 of proposed bill.

Section 1648, that in calling out militia the President shall specify length of time, which shall not exceed nine months, is provided for in section 19 of proposed bill.

Section 1649, penalty for disobeying order calling into service, is provided for in section 20 of proposed bill, changing penalty to that prescribed for desertion.

Section 1651, prescribing when pay shall commence, is superfluous, and is omitted in proposed bill.

Section 1652, allowing one day's pay for every twenty miles travel, is retained as section 21 of proposed bill, changing it to fifty miles.

Section 1653, regulating allowance for forage and use of horses in service, is changed and provided for in section 23 of proposed bill.

Section 1654, to regulate liability for expense of marching militia to place of rendezvous when called into service, is superfluous, and is omitted in proposed bill.

Section 1655, allowing militia called into service on western frontier extra rations is obsolete.

Section 1656, that pensions shall be allowed to widows and children of militiamen, is provided for in the general provisions of section 19 of proposed bill.

Section 1657, allowing pensions to volunteers and militia who were disabled in service against Florida Indians is obsolete, and belongs to the general pension laws.

Sections 1658, 1659, 1660, that courts-martial for the trial of militia shall be composed of militia officers only, and providing for the collection of fines imposed, are omitted in proposed bill, as applicable only when the militia are in the service of the United States, and it is provided that when in service they shall be governed by the rules and regulations of the Army.

Section 1661, makes a permanent appropriation of \$200,000 a year to provide arms and equipments for the militia. Sections 6 and 7 of the proposed bill abolishes this system, and provides that the active militia shall be fully armed and equipped, and leaves it in the hands of Congress to make annual appropriations for that purpose.

## DETAILS OF PROPOSED LAW.

Section 1 provides that all citizens between eighteen and forty-five years of age shall be enrolled in the militia. This is existing law.

Section 2 divides the militia into two classes—the active and inactive. The purpose of this division is to recognize the volunteer militia of the States as the militia *de facto*. As this is the key of the proposed change in the militia system, we shall consider it more in detail further in this report.

Section 3 provides that the active militia shall consist of the militia organized under the laws of the respective States. As the term of enlistment in the volunteer militia varies under the militia laws of different States, it is deemed desirable to add the proviso that to entitle them to arms and equipments the enlistment shall not be for a less period than three years. In order to prevent any question that might arise if the term of enlistment of a militia-man should expire while he is in the service of the United States, a further proviso is added that his enlistment shall contain a condition to cover that contingency.

Section 4 provides that the organization of the active militia shall conform as closely as practicable to that of the Regular Army.

Section 5 is a clause similar to existing law to provide that same system of drill and tactics shall be used by the active militia as is prescribed for the Regular Army.

Section 6 is a transcript of clause in existing law to provide for recognizing as a portion of the active militia any privileged volunteer organizations that exist in the States.

Section 7 specifies the kinds and amounts of arms, equipments, uniforms, and camp equipage that shall be furnished by the general government to the active militia, and is an important feature in the proposed change in the militia system, as it substitutes these specifications for the existing permanent appropriation of \$200,000 a year for this purpose. As the States have already in possession arms and equipments heretofore issued, and as many of the States have largely overdrawn their accounts in the annual allotment of the permanent appropriation, a provision is added to this clause to release the States from any liability for their overdrawn accounts, and to require them to account for the property now in possession as a part of the allowance made by this act. As the bill provides that the active militia shall be armed and equipped by the general government, it is required of the States, to entitle them to the benefits of the act, that they shall comply with the provisions deemed necessary to make it efficient and available whenever its services may be required by the general government. But in order that immaterial departures from the requirements of the law, or failure under excusable circumstances to comply with them, may not be construed to the prejudice of the militia, a discretionary power is left with the Secretary of War to authorize the issue, if he deems it advisable.

Section 8 provides that the Secretary of War shall include in his annual estimates the amount of money required to carry out the provisions of the bill, and places the whole matter of supplying the militia in charge of the Ordnance Department, under his direction.

Section 9 and 10 provide for accountability by the States for property issued to them, and supplies one of the manifest deficiencies of the existing law, which makes no provisions on the subject.

Sections 11 and 12 provide for annual returns to be made, in order that Congress may be fully advised of the condition and needs of the

militia, and the Executive at all times in possession of necessary information as to its availability for service.

Section 13 prescribes and limits the use of the service uniform by the active militia.

Section 14 provides that to entitle them to be provided for by the general government, the active militia shall assemble in camps of instruction annually, and be annually inspected. These provisions are most important, as it is only through their agency that the militia can be brought to that state of efficiency that would justify the government in the expenditure necessary to maintain it.

Section 15 provides that officers of the Regular Army shall be present at the annual inspections of the militia, to make observations as to their efficiency and to examine the condition of the public property in their possession. The section carefully guards against any exercise of unconstitutional authority in the premises, and is not only deemed essential but is also earnestly desired by the militia.

Sections 16 and 17 have for their object the encouragement of rifle practice, and for such competition between the Militia, the Regular Army, and the Navy, as must result in great benefit to each. This subject is now so well understood, and has become a matter of so much national pride, that argument in favor of it is unnecessary.

Section 18 provides that officers of the Regular Army may be detailed to serve as adjutants in the active militia. This provision is earnestly desired by the militia, and as it can be complied with without expense to the government, and when availed of must result in such great benefit to the militia, it is deemed a wise provision. In large cities in which regiments of active militia exist as "live organizations," the administrative business of the regiment is so great that it is almost impossible to find officers who can spare the time from their daily avocations to discharge it. There is not only no compulsion in the provisions of the section, but careful provision to the contrary. It is obvious that supernumerary and unemployed officers of the Regular Army, who have been educated in their profession at the public expense, cannot be better employed than in assisting the efforts of the militia to attain efficiency, whenever the militia request it.

Section 19, 20, 21, 22, and 23 make the necessary provisions for authorizing the President to order the active militia into the service of the United States, and for governing them while in the service. These provisions do not differ materially from existing law, except that they are better arranged and more concise, and are made applicable to the active militia only.

Section 24 provides that the reserve militia shall only be called into service by act of Congress. No contingency could arise in which it would be proper to call out the unarmed, unorganized, and untrained mass of the population without some legislation by Congress to provide specially for it.

Section 25 provides for the appointment of a board of officers to prepare a system of rules and regulations for the discipline of the militia, to select a uniform, and to determine the kind and amount of ammunition and camp equipage that shall be allowed to the militia.

Section 26 makes an appropriation for the ensuing fiscal year. As the bill repeals existing appropriation, unless an appropriation is made in the bill the militia would be without any supplies whatever during the year intervening before the regular estimates of the Secretary of War would be appropriated for.

## DIFFERENCES BETWEEN EXISTING LAW AND PROPOSED LAW.

From the foregoing statements of details, it is apparent that the leading features of difference between existing law and proposed law are as follows:

First. To substitute a volunteer militia, limited in number in time of peace, for the existing compulsory system that applies to the whole body of the people, and which has become so inapplicable as to be utterly disregarded.

Second. To make such provisions as will aid and encourage the formation of volunteer organizations, remove the disparity in their numbers and discipline that exists between different States, and promote their efficiency to a common standard that will make them available for all the purposes for which a militia is required.

Third. To abolish the present system of a permanent appropriation to provide arms and equipments for the militia, and substitute provisions prescribing with what arms and equipments the militia shall be furnished, and on what conditions—leaving it in the discretion of Congress to regulate the annual appropriations for that purpose.

If these three leading points are agreed upon as the proper remedy for the defects in the militia system, the details necessary to carry them into effect will not require much discussion.

In relation to the first feature, the substitution of the volunteer system, the brief sketch we have given of the history of the militia law will have made it apparent that the chief defect of the existing system was early recognized to be in the excess of numbers held to militia duty by it. As the country increased in population this excess of numbers correspondingly increased, until the law has now become a practical absurdity by requiring to-day actual militia service from six and one-half millions of men. We have seen that for more than half a century the best and wisest statesmen of our country endeavored to procure agreement to some plan that would limit the militia to a practicable number, in order that it might be made an effective body. The more the country increased in population, and the more the population became absorbed in the pursuit of wealth and material prosperity, the more impracticable became the provisions of the militia law, until finally it sunk into such utter contempt that all pretence of regarding it ceased. The "corn-stalk militia" and the annual "trainings," with all their accompanying parodies on military efficiency, remain only as recollections of our boyhood days. Volunteer organizations gradually increased as regard of existing law decreased, and, though unrecognized by the general law, and without any of the aids or requirements necessary to secure efficiency, they have managed to maintain a precarious existence, and have unquestionably been of great and essential service to the country. We think it good policy and true statesmanship to acknowledge the changes and avail ourselves of the results which time and the force of circumstances have brought about, and we therefore assent to the proposition that the volunteer militia of the States—the militia in fact—should be recognized as the militia of the law, and provided for accordingly.

On the second feature of the bill, the provisions made for promoting the efficiency of the volunteer militia and securing a uniformly high standard in all the States, we believe that there can be no disagreement.

The unorganized levies which, under the name of militia, have been called into service in all the great wars of the country, while they occasionally performed some brilliant service, have not only shown the inefficiency of existing law, but have also served to make the term "militia" one of contempt and derision. It is not denied that in the existing

volunteer organizations great disparity exists in their character and efficiency between the States and even within States. During the "labor riots of 1877" some volunteer organizations proved utterly undisciplined and unreliable, while others performed conspicuous and valuable service. Congress has never exercised its constitutional power "to provide for organizing, arming, and disciplining" the volunteer militia. On the contrary, the volunteer organizations have maintained themselves at their own expense, with such aid as by unwearied exertions they may have been able to procure from their respective States. It is due solely to the want of support and of uniform requirements as to drill and discipline that the volunteer organizations have not all reached the same efficiency that characterize a part of them. The men who constitute the volunteer organizations are naturally those who have some love or aptitude for military affairs, and we therefore see no reason why, under proper regulations for their discipline and training, they cannot attain a high and uniform efficiency. That they have been or are in any particulars inefficient is not an argument against the possibility of making them all that we desire. We therefore consider the provisions made in proposed bill, to aid and encourage the volunteer system and to exact certain requirements of them, as both politic and wise. We deem them politic, for the reason that the aid they offer is conditioned on the volunteers complying with the provisions which are deemed essential to their efficiency. We deem them wise, for the reason that we believe that under their operations a volunteer militia will be created which, although remaining under the exclusive control of the States, will, when its services are required by the general government, be found ready and equipped for instantaneous service and fully efficient to perform the duties of militia, which Jefferson defined to be "not only to meet the first attack, but, if it threatens to be permanent, to maintain the defense until regulars can be engaged to relieve them." It is also worthy of consideration that in encouraging the volunteer system you provide for disseminating military knowledge and a partial military training among those who would be most likely to respond to a call for volunteers in time of war.

It has been agreed by all who have preceded us in considering the subject that, whatever might be the expense of securing an efficient militia, it would be so small, as compared with the benefits to be derived from it, that it should not be considered, and would in fact be covered by indirect savings of expense which it would render practicable in other directions. Nevertheless, your committee have deemed it proper to endeavor to form some estimate of the expense of the aid proposed to be extended to the volunteer militia by the bill under consideration.

While the States have applied all the existing permanent appropriation for the militia to providing the volunteer militia, the issue of property under that appropriation is limited to arms and equipments. This has been not only the greatest obstacle to the advancement of the volunteer militia, but has also prevented them from being useful on the occasions that their services have been required. Tents and camp equipage are absolutely necessary to enable the volunteers to go into camps of instruction and learn the elementary duties of soldiers. A plain, serviceable, and unostentatious uniform, overcoats, blankets, haversacks, canteens, &c., are essential to the outfit of the volunteer, that he may be called into service at a moment's warning, and that his services may be effective when called for.

We quote the latest report of the Secretary of War on the subject (Ex. Doc. H. R. 36, second session Forty-sixth Congress) for information of the number of militia:

*Abstract of the militia force of the United States (organized and unorganized), according to the latest returns received at the office of the Adjutant-General, United States Army, furnished for the information of the Congress of the United States in compliance with section 232 of the Revised Statutes.*

States.	Organized strength.							Number of men available for military duty (unorganized).
	Year.	General officers.	General staff officers.	Regimental, field, and staff officers.	Company officers.	Total commissioned.	Total non-commissioned officers, musicians, and privates.	
Maine.....	1872	1	10	9	41	61	814	875
New Hampshire.....	1879	1	2	27	107	143	1,505	1,948
Vermont.....	1879	1	14	12	38	65	605	670
Massachusetts.....	1879	2	17	95	215	329	3,699	4,028
Rhode Island.....	1878	4	35	76	99	214	1,764	1,972
Connecticut.....	1879	7	15	37	134	193	2,295	3,088
New York.....	1879	19	205	264	851	1,339	18,941	20,280
New Jersey.....	1878	3	35	67	130	235	2,988	3,223
Pennsylvania.....	1879	6	56	174	451	687	9,063	9,750
Delaware.....	1879	3	4	6	6	14	76	90
Maryland.....	1879	1	8	5	66	81	1,164	1,245
Virginia.....	1879	1	1	22	161	185	2,450	2,635
West Virginia.....								
North Carolina.....	1879	7	18	41	196	262	2,321	2,783
South Carolina.....	1879	16	162	67	748	993	10,812	11,805
Georgia.....								
Florida.....	1878	8	50	100	215	373	5,130	5,503
Alabama.....								
Mississippi.....	1879	7	2			9		9
Louisiana.....	1879	5	5	47	149	206	2,531	2,737
Texas.....	1879	1	1	1	84	87	1,119	1,206
Arkansas.....	1877	14	32	197	710	953	15,424	16,377
Kentucky.....	1879		1	4	43	48	674	722
Tennessee.....	1876	1	6		72	79	1,205	1,284
Ohio.....	1879	1	16	114	400	531	7,343	8,374
Indiana.....	1879		8		72	80	1,464	1,544
Michigan.....	1879	5	12	23	71	111	1,688	1,799
Illinois.....	1879	3	51	107	387	548	6,246	7,394
Missouri.....	1879	1	4	5	67	77	1,270	1,347
Wisconsin.....	1879	3	6	5	78	92	1,732	1,824
Minnesota.....	1879	1	3	1	8	13	191	204
Iowa.....	1877	1	11	50	269	331	4,250	4,581
Nebraska.....	1879	1	1		36	38	658	696
Kansas.....	1879	5	5	11	106	127	1,920	2,047
Nevada.....								
Oregon.....	1878	3	24		32	59	582	641
California.....	1879	7	28	42	120	257	2,340	2,507
Colorado.....	1878	6	7		36	49	553	602
Grand aggregate.....		145	921	1,605	6,198	8,869	117,037	125,906

\* Estimated in Adjutant-General's Office.

E. D. TOWNSEND.  
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE,  
Washington, D. C., January 31, 1880.

From this report it will be seen that there now exists, on paper, an organized volunteer militia of 125,906. The proposed bill limits the number that the general government will provide for to about 200,000, and it is not considered probable that for some time to come an actual force of over 150,000 will require to be provided for.

The existing volunteer militia are more or less already provided with what is essential. Some of the States have made very large appropriations to supplement the amount heretofore allowed by the general government, and many of the States, as we have before mentioned, have now in possession considerable amounts of arms and equipments that have been issued to them by the general government. It is therefore



difficult to estimate what would be the cost of making up deficiencies, and of completing the arming and equipment and of providing uniforms and camp equipage for the volunteer militia in the manner contemplated by the bill, but we judge that three million dollars would be ample for that purpose, and that its appropriation might be distributed into the budget of three successive years. After the volunteer militia should be once completely armed and equipped, we judge that an annual expenditure of \$750,000 would maintain it in proper condition. These sums are comparatively very small, scarcely large enough to excite either opposition or comment, being smaller than was frequently contemplated and advocated in the early days of the Republic. The annual expenditure would be less than is required to maintain a regiment of cavalry in the regular service, and it cannot for a moment be questioned that a standing force of 150,000 thoroughly armed, equipped, and well-drilled volunteers, ready to take the field at the first moment of danger, would be as effective in the national defense as one regiment of regulars, and that the existence of such a force would be seriously considered by any nation contemplating an attack on us. In this connection it is not improper for us to observe that the Senate Committee on Military Affairs in the Forty-fifth Congress (Senate Report 50, second session Forty-fifth Congress) recommended that the annual appropriation for the militia be increased to \$1,000,000, very pertinently observing that "if \$200,000 was none too much in 1808, certainly \$1,000,000 is none too much now."

On the third general feature of the bill, that of abolishing the permanent appropriation and placing the requirements of the militia on the same footing as all other needs of the government, to be annually estimated and to be appropriated for in the discretion of Congress, the committee do not deem any arguments necessary.

While the proposed bill scarcely involves the

#### POWERS OF CONGRESS AND RIGHTS OF THE STATES,

your committee deem it proper to present its bearings on those points in order that no question may arise in regard to them.

There is no feature in our form of government in which the powers of the general government and the rights of the States are so intimately interwoven as in the jurisdiction over the militia. One of the stated primary causes for forming the Union was to "provide for the common defense." In the opinion of the framers of the Constitution, a well-regulated militia was the essential means of providing for the common defense, and they accordingly framed the clause to provide that Congress shall have power—

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

The purposes and provisions of this clause are clearly and distinctly stated and scarcely admit of misinterpretation. The States are expressly limited to the appointment of the officers and to training the militia, and in training it according to the discipline prescribed by Congress. If the power conveyed to Congress by the words "organizing, arming, and disciplining" could be doubted, the debates of the Federal Convention are sufficiently clear to remove them. The committee that reported the clause, on being asked the scope of the powers that they intended to convey, replied that they meant by "organizing," propo-

tioning the officers to the men; by "arming," not only to provide for uniformity of arms, but the authority to regulate the modes of furnishing them, either by the militia themselves, the State governments, or the national Treasury; and by "disciplining," to prescribe the manual exercise, evolutions, &c., and that laws for disciplining must involve penalties and everything necessary for enforcing penalties.

The debates of the Federal Convention on adopting the clause, though short, are pertinent.

Mr. Mason, who introduced the subject, thought that all power over the militia should be vested in the general government, which he subsequently modified by suggesting that this absolute power should be limited to a portion of the militia at a time, so that by serving in rotation the whole body would finally be disciplined.

Mr. Madison thought that the regulation of the militia naturally appertained to the authority charged with the public defense, that it did not seem in its nature divisible between two distinct authorities, and that the discipline of the militia is evidently a national concern, and ought to be provided for in the national Constitution.

The clause as reported by the committee had but little opposition, it being conceded, as stated by Mr. Randolph, that reserving to the States the appointment of the officers was all the security they needed. Mr. Dayton and Mr. Ellsworth expressed themselves in favor of placing greater limitation on the power of Congress, but a motion made for that purpose received only one vote, that of Mr. Ellsworth, who moved it, and the clause, as it now stands, was therefore adopted with a marked unanimity in sentiment and vote.

We have only adverted to the question of the constitutional power of Congress as a matter of historical interest in connection with the general subject, for whatever question there may be as to the constitutionality of the existing law, or of some of the plans heretofore suggested for reorganizing the militia, none can possibly arise on the proposed bill, for it is a happy solution of all the constitutional questions involved. There is not a compulsory feature in the bill. It simply says to the States that if they will by their own laws provide for and enforce such requirements as Congress deems necessary to secure an efficient militia, Congress will exercise its unquestioned constitutional power, and provide for arming such militia out of the national Treasury.

#### GENERAL CONCLUSIONS.

From this review of the subject your committee are satisfied that time has solved those difficulties of the militia system for which the wisdom of our predecessors could find no acceptable remedy, and that the great increase in the population of the country now makes it not only practicable but desirable to substitute the volunteer system for enforced militia duty in time of peace. The subject is one on which there never has been any political differences, and on which none should exist. Washington, as the exponent of the Federalists, was unceasing in his efforts to procure legislation, and Jefferson, as the leader of the Anti-Federalists, was even more importunate in urging it. In view of these facts, and of the fact that we now have practically no militia system, and that the strength and perpetuity of our republican form of government largely depends on the existence of a well-regulated militia, we indulge the hope that the subject will receive the earnest consideration which it deserves, and that some decisive action will be taken on it.

ST. CLAIR A. MULHOLLAND.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFBOTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2560.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2560) granting an increase of pension to St. Clair A. Mulholland, have considered the same, and report:*

St. Clair A. Mulholland entered the service September 2, 1862, as lieutenant-colonel One hundred and sixteenth Regiment Pennsylvania Volunteers; promoted to colonel May, 1864; breveted brigadier and major general United States Volunteers. At the battle of Fredericksburgh, Va., December 13, 1862, he was shot through the right leg, and at the Battle of Tolopotomy Creek, Virginia, May 31, 1864, he received a gunshot in the privates, the ball tearing open the scrotum and destroying the right testicle, then passing into the buttock and coming out near the anus. At the close of the war he was awarded half pension, \$15 per month. At the bi-annual examination, 1875, the board of surgeons, at Philadelphia, Pa., raised him to full pension, or \$30 per month. The Commissioner of Pensions, at the recommendation of the board of surgeons at Washington, refused the increase.

After a full and careful consideration of the case, your committee is of the opinion that the officer is entitled to and should have received a full pension, and respectfully recommend that the bill do pass.



GEORGE W. TETER.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 1264.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1264) granting a pension to George W. Teter, have considered the same, and report :*

George W. Teter was enrolled as a private in Company K, Twelfth Regiment West Virginia Volunteers, on the 5th day of March, 1864, having enlisted in said organization on 25th February preceding, and was honorably discharged from said service August 9, 1865, having, in the month of May, 1865, been transferred to the Tenth Regiment West Virginia Volunteers.

Teter alleges that in February, 1865, while in line of duty, procuring wood for the command, he was ruptured, and now is disabled by reason of hernia, he having been perfectly sound when enlisted. To support his claim he adduces the testimony of Dr. Ramsey and four of his neighbors, who state that prior to his military service he was a sound man, and that since his return from the army he has been disabled and complains of hernia.

Capt. J. B. Jester certifies that he commanded the company to which Teter belonged, and he further states that Teter was an excellent soldier, and was on the 27th February ruptured while in line of duty, procuring wood for the command, and was sent to convalescent camp by order of the surgeon of the regiment.

E. F. Pegatt, second lieutenant of claimant's company, testifies that in February, 1865, claimant was sent to convalescent camp, and was not again on duty, and that at the time claimant told him he had hernia.

J. E. Crim testifies that he was a comrade of claimant in the service, and he knows that in January or February, 1865, Teter was injured in some way while on duty, and was sent away and not again connected with the command.

A. W. Lindsey and S. F. Fortney make same statement.

The claim was rejected because the proof was not satisfactory to the Commissioner of Pensions, there being no record evidence to support it.

The committee think the weight of the evidence entitles claimant to pension, and we recommend that the bill do pass.



FOREST W. McELROY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 4461.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4461) granting a pension to Forest W. McElroy, late private of Company F, Eighty-seventh Pennsylvania Volunteers, have had the same under consideration, and beg leave to submit the following report :*

Forest W. McElroy was mustered into the military service of the United States as a private of Company F, Eighty-seventh Regiment, Pennsylvania Volunteers, on the 25th day of September, 1861; re-enlisted April 15, 1864, for three years; transferred to the Veteran Reserve Corps August 31, 1864, and was honorably discharged from the United States service on the 14th day of November, 1865.

The claimant was struck on the left arm near the shoulder with a piece of shell, or minie ball, at the battle of Carter's Woods, near Winchester, Va., June 14, 1863, since which time a lump, or tumor, has been growing on the injured spot until it has so increased in size that it has paralyzed the left arm and wholly unfitted him to do any manual labor.

The claimant, on the 11th day of August, 1873, filed his application for a pension. This application was rejected on the ground that "tumor on left arm is not the result of an injury received in the United States service."

William F. Baker, who was a lieutenant in the same company, testifies that at the battle of Carter's Woods, near Winchester, Va., on the 14th day of June, 1863, Forest W. McElroy was struck on the left arm near the shoulder with a piece of shell while in the line of battle and in the discharge of his duty; that said McElroy was a good, reliable soldier, and ever ready to discharge any duty assigned him.

Dr. T. T. Tate, late assistant surgeon Third Pennsylvania Cavalry, testifies that he has examined and treated Forest W. McElroy for cartilaginous tumor on his left arm, the result, in his opinion, of an injury received while in the United States service, as alleged by Forest W. McElroy, and that he has treated said McElroy from time to time since his discharge from the United States service, in December, 1865, to the present time; that said tumor was then about the size of a grape-shot, but has now grown as large as a goose egg, and has rendered said left arm powerless, and unfits Forest W. McElroy from doing any manual labor whatever.

Frederick Reitingger, late private of Eighty-seventh Regiment, Penn-

sylvania Volunteers, testifies that he was present with said Forest W. McElroy at the battle of Carter's Woods, June 14, 1863; about two weeks after the battle saw said McElroy rubbing the spot where he had been injured during the battle; examined it and found a red lump on the left arm about the size of a buck-shot; was transferred with said McElroy to the Veteran Reserve Corps; slept and served with him until discharged, November 14, 1865; often saw the lump on his arm during the intervening time, and knows that it continued to increase in size, until it was as large as a grape-shot at the time of his discharge.

Joshua Happoldt, late private Company F, Eighty-seventh Pennsylvania Volunteers, testifies that he worked with said F. W. McElroy and slept in the same bed with him for two years prior to his enlistment in the United States service, and knows that said F. W. McElroy had no growth or lump on his left arm before he entered the United States service, and that he was a sound, healthy man in every respect, to the best of his knowledge and belief.

From the testimony, a small portion of which has been given above, of honorable and respectable citizens, and a very distinguished member of the medical profession, the committee are thoroughly satisfied that Private Forest W. McElroy received the disability which disables him from doing any manual labor while in the service of the United States; that it is clear that the injury received on the 14th day of June, 1863, caused the tumor of the left arm, as alleged, and that it has continued to grow worse until the present time. The committee do not hesitate to recommend the passage of the accompanying bill.



MARY J. GOSLEE.

APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4474.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4474) granting a pension to Mary J. Goslee, after a careful consideration of the case, respectfully report :*

That the claimant is the mother of George H. Goslee, deceased, who was enlisted at Georgetown, in the State of Delaware, on the 1st day of March, 1862, for a period of three years or during the war, in Company B, Third Regiment of Delaware Infantry Volunteers, and who died in the service at Patterson Park Hospital, in Baltimore, Md., on or about the 13th day of November, 1862.

The evidence is very full and satisfactory in proof that the claimant is a widow, absolutely poor, and dependent upon her own manual labor for support, which the increasing infirmities of age render her every year less able to perform. It is clearly established, also, that at the time of her son's death she was dependent upon him for subsistence. The committee therefore recommend the passage of the bill.



MARGARET J. MCKINNY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5007.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5007) granting a pension to Margaret J. McKinny, have considered the same, and report:*

It appears that the said Margaret J. McKinny is the widow of William McKinny, who was a private in Company G, Twenty-ninth Pennsylvania Volunteers, and who was discharged said service July 17, 1865.

It is alleged that the husband of claimant returned to his home from the Army on the 26th day of July, 1865; that he was at that time sick; his disease was pronounced "Army fever," and that he died on the 3d day of August following, eight days after his return home.

McKinny was treated by a physician during his last illness, who died before his testimony could be obtained in this cause. Thomas McConnel, however, testifies that said physician told him that the soldier died of fever contracted in the Army. The said McConnel further testifies that shortly after his return from the service the soldier was sick at his house and died from what was called Army fever. James McKinny and John Rider testify that McKinny was a healthy man when enlisted. Sixty-seven citizens of Pennsylvania signed a paper, which was presented to Congress several years ago, setting forth the above facts.

The claim was rejected by the Commissioner of Pensions.

Neither the office of the Adjutant-General nor of the Surgeon-General contain testimony bearing on the case.

In the opinion of the committee this is an exceptionally meritorious case. We think an equitable right to pension is clearly exhibited, and recommend that the bill do pass.



CATHERINE LOSE.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4473.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4473) granting a pension to Catherine Lose, have considered the same, and report:*

Catherine Lose is the mother of Cyrus Lose, who was a private in Company H, Eleventh Regiment Pennsylvania Reserve Volunteers, and who died while in said service.

The claimant alleges that the said Cyrus Lose was her only son, and that he was never married, and that she was dependent upon him for support.

It appears from the evidence that the claimant is the owner of a house and lot valued, variously, at from \$225 to \$800. It further appears that she has about \$400 at interest at the rate of 8 per cent. per annum; that the family consists of the claimant and her husband. George Lose, claimant's husband, is quite aged and infirm, having suffered from rheumatism for a long time, and has been almost totally blind for several years. It is fully shown that the dwelling and the money at interest, which yields \$32 per annum, is all the property possessed by claimant, her husband having no property whatever.

It is shown that when the soldier enlisted that claimant's husband assisted in maintaining the family; that he was at that time able to work at his trade, though it is fully shown that the son before his enlistment earned \$8 per month, he being also a shoemaker, which went to the support of his parents. It is further shown that during his service said soldier regularly sent to his mother, the claimant, the sum of \$8 every month.

The claim was rejected because it appeared that at the time of the soldier's enlistment, and during his service and at the time of his death, the husband of claimant was able to labor at his trade, though it was just as fully shown that the soldier assisted in supporting his parents.

It is further shown that at the time of the soldier's death his mother owned no property, neither did his father. The property was acquired afterward, the claimant having acquired by descent property to the value of \$1,300, with which she paid debts, bought the real estate, giving therefor \$450, and loaned the balance as above.

The committee think the evidence shows that claimant is entitled to pension, and in view of all the facts proven we recommend that the bill do pass.



DANIEL POPE.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4296.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4296) granting a pension to Daniel Pope, late a private in Company G, Fifth Pennsylvania Reserve Corps, having had the same under consideration, respectfully report:*

Daniel Pope made application for pension October 5, 1875, as No. 208,716, alleging rheumatism and heart disease contracted by exposure in line of duty after the battle of Antietam in 1862, and at Rappahannock River in October, 1863.

The testimony of Dr. John McCullough, examining surgeon, and two comrades, shows that he was in sound health and free from rheumatism and heart disease at the time of his enlistment. He shows by two comrades that he contracted rheumatism in the service in line of duty. Also by Lieut. John A. Willoughby (lieutenant of claimant's company), that he contracted rheumatism from exposure and hardships incident to the service in October, 1863, near Rappahannock River, Virginia, for which he was treated by the surgeon and assistant surgeon, and that he was still suffering therefrom at the date of his discharge in June, 1864. Also by Ex-Sheriff Miller, Ex-Senator Petriken, Wm. Africa, merchant, and other reputable neighbors, that having abundant means of knowing his physical condition from the time of his return home in the summer of 1864, he has been a continuous sufferer from rheumatism, completely disabling him, at times unfitting him for any occupation. That he has grown prematurely old and enfeebled, and in their opinion will never recover therefrom.

Dr. Harrison T. Whitman, of Indianapolis, late assistant surgeon of the Fifth Pennsylvania Reserves, swears that he was well acquainted with Daniel Pope, private in Company G, Fifth Pennsylvania Reserves, and that at various times and places, to wit, in the month of October, 1863, at Rappahannock River, Virginia, in the month of December, 1863, at Manassas Junction, Va., in the month of April, 1864, at Alexandria, Va., he treated the said Daniel Pope for rheumatism in the back and hips. That said disease was contracted, as deponent verily believes, in the service of the United States in the line of duty.

Claimant enlisted June 5, 1861, for three years; was discharged June 5, 1864.

Application was rejected on ground of inability to show medical evidence of connection of present disability with the service. Claimant

persistently refused to go to the hospital when in service, having been there but a few days for treatment for diarrhea in April, 1863, as reports of the Surgeon-General show, during the entire term of service. Dr. Samuel G. Lane, the surgeon of the regiment, cannot testify with any certainty, as he lost all his records and memoranda by the burning of Chambersburg. Drs. Snare and Neff, of Huntingdon, Pa., who treated claimant for several years after leaving the service, are both dead, and it is impossible to give any other medical evidence than that of Assistant Surgeon Whitman. But the strong and unchallenged evidence of worthy citizens as to the condition of applicant from time of discharge to this date, is certainly sufficient to establish the justness of his claim.

The committee believing that the claim is just, report back the bill (H. R. 4296) with a recommendation that it be passed.





JAMES M. SINGER.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

## R E P O R T:

[To accompany bill H. R. 3085.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3085) granting a pension to James M. Singer, have considered the same, and report:*

The said James M. Singer was enrolled as a member of Company O, First Battalion First United States Infantry, October 21, 1861, and discharged from said service because of disability February 18, 1863. He alleges that in December, 1862, near Murfreesboro', Tenn., on a march, he contracted disease of the left lung and kidneys caused by exposure, the command being without tents or shelter for some time, and that the disability resulting therefrom, and for which he was discharged, has been continuous and is permanent.

To support his allegation Singer adduces the affidavit of Thomas Davis, late lieutenant Nineteenth Regiment United States Infantry, who testifies that while on a march between Murfreesboro' and Nashville, Tenn., claimant contracted disease of the lungs and kidneys by reason of exposure and the severity of the weather.

The certificate of disability under which the claimant was discharged contains the statement that for several months preceding its date, February 12, 1863, claimant had chronic bronchitis, "totally disabling him from performing the duties of a soldier; recovery distant and uncertain; has had complete aphonia for the last four weeks." The report of the Adjutant-General's Office shows that he was discharged for disability February 18, 1863.

Dr. A. Yeagley testifies: "Commenced treating claimant in April, 1863; his health much impaired; considerably emaciated, weight reduced from 140 pounds to 100; bad cough, expectorating much purulent matter; accelerated pulse, hectic symptoms, accompanying it was a venal affection which resulted in chronic nephritis; treated him over nine months almost every week, and at intervals from one to several months since. He has never been able to perform hard manual labor since. Pulmonary disease has increased; kidney affection remains."

The Commissioner of Pensions rejected the claim because the examining surgeon appointed to examine him reported that he was laboring under no disability.

The committee are of opinion that the evidence in support of the claim greatly outweighs the opinion of the said examining surgeon, and we further think a right to pension has been shown by claimant, and recommend that the bill do pass.



JAMES L. JORDAN.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 256.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 256) granting a pension to James L. Jordan, have considered the same and report:*

James L. Jordan was drafted into the Eighty-eighth Regiment, Pennsylvania Troops, war of the rebellion, in September, 1864, and discharged herefrom January 5, 1865, on surgeon's certificate of disability.

Jordan alleges that when he was drafted in said service he was not capable of performing military service; that he had but one tooth, and it partially decayed, in his upper jaw, and he alleges on that account he was unable to properly masticate his food, consequently he was attacked with chronic diarrhea, from which he is still suffering.

The surgeon's certificate of disability under which he was discharged certifies that Jordan had no teeth in his upper jaw, and for that reason was improperly drafted.

It is alleged by claimant that he had no other disability when drafted.

Three examining surgeons, John Wishart, W. J. Gilmore, and D. M. McMaster, jointly certify that they examined claimant February 5, 1879, and at that time pronounced him partially disabled. They say that he has slight chronic diarrhea, indicated by red, smooth, shiny tongue, tenderness in abdomen, and frequent stools.

From the evidence, the committee have arrived at the conclusion that he claimant's disability was occasioned by his service in the Army and entitles him to pension.

We therefore recommend that the bill do pass.



ELIZA HUDSON.

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APRIL 7, 1860.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5640.]

*The Committee on Invalid Pensions, to whom was referred the petition of Eliza Hudson, widow of the late Capt. William L. Hudson, United States Navy, asking for increase of pension, have considered the same, and report:*

Mrs. Eliza Hudson is the widow of the late William L. Hudson, who was a captain in the United States Navy at the time of his death, 15th October, 1862. Captain Hudson entered the naval service of the United States as a midshipman in 1816, and served the government as a naval officer till his death in 1862—more than forty-six years. He was engaged during his service in suppressing the pirates in the Grecian Archipelago, and was wounded in an engagement with them in one of his legs. The bullet could not be removed, and he suffered much with it for nearly thirty years previous to his death, during all of which time he was engaged in active service. At the time of his death he was light-house inspector of the New York district, and died from disease caused by exposure in said service. His widow, the claimant, applied for a pension soon after his death, which was granted her, the rate being \$30 per month. She is in her seventy-ninth year, and very feeble; and she states the amount of \$30 per month will not support her in comfort; that she is very aged and feeble and in ill-health, and she asks that said pension be increased to \$50 per month. In view of her great age, her feeble health, and the long and distinguished services of her husband, the committee are of opinion that the petition should be granted, and we recommend the passage of the accompanying bill.



SOLOMON T. KAUBLE.

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APRIL 7, 1880.—Laid on the table and ordered to be printed.

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Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1709.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1709) granting a pension to Solomon T. Kauble, have considered the same, and report :*

It appears that this case has never been prosecuted to a final hearing in the Pension Bureau. The committee therefore ask to be relieved from its further consideration, and that the same be referred to the Commissioner of Pensions.

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JAMES W. GIVENS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT :

[To accompany bill H. R. 5641.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2661) granting a pension to James W. Givens, have had the same under consideration, and submit the following report :*

It appears from the evidence that James W. Givens was enrolled September 7, 1861, in Company D, Fifth Regiment Missouri State Militia, to serve six months, and was mustered out of said command February 4, 1862.

Givens alleges that while in said service and in line of his duty, in December, 1861, the weather being disagreeable, his command made a forced march from Troy, Mo., to the line of the North Missouri Railroad. He states that upon said march he exerted himself greatly, and the command having no tents were compelled to sleep on the frozen ground; that he contracted a violent cold, which soon developed in pneumonia, and which finally resulted in hemorrhage of the lungs, which still afflicts him, and incapacitates him for obtaining his sustenance by manual labor. He also alleges that previous to his enlistment he was a sound man physically.

J. H. Milroy states as follows :

Said James W. Givens was disabled while in the service as private in Company D, Fifth Regiment Missouri State Militia, and while in the line of duty, as follows : While on a forced night march from Troy, Lincoln County, Mo., to a point near the North Missouri Railroad, the said James W. Givens was taken ill with pneumonia or a severe cold, which settled upon his lungs and resulted in hemorrhage of the lungs, and that the disability continued till his discharge.

Milroy also states that he has known Givens since his discharge from said service, and that he has been a man of good morals.

Dr. E. M. Bartlett testifies that he is a practicing physician and surgeon, and has been for forty-five years, and that he has known the applicant, James W. Givens, from his boyhood; that he knew him at the time of his enlistment; that he was then a sound and healthy man; that he treated the said Givens for the disease from which he is now suffering, viz, hemorrhage of the lungs, while he was in said service, and that he knows of his personal knowledge that claimant contracted the disease while in the service; that he has been the family physician of claimant since his return from the service, and has given him medical treatment for said disease, viz, hemorrhage of the lungs, and that he is still under said treatment for said disability; and that Given has had a hemorrhage from the lungs at least once a month since his discharge.

Lawrence W. Givens states that he is a cousin of claimant. He testifies to the fact that claimant was in the said service, and to the fact of the forced march, and that while on said march claimant had to be hauled on an ambulance. He says, from his own personal knowledge, claimant was then suffering from severe cold, and was immediately taken with severe illness in the nature of pneumonia, which resulted in hemorrhage of the lungs. This witness also testifies to the fact that he has been intimate with claimant since his return from the service and before his enlistment; that he had before service been a very able-bodied man, there being no hereditary disease in the family; that since his discharge claimant "has been and is suffering with hemorrhage of the lungs," sometimes having an attack two or three times a week, and at other times not oftener than once in two weeks, and sometimes only once per month.

Joel R. Rowley testifies that he was a volunteer nurse in said regiment during the time of claimant's said illness. He testifies to the fact that said illness was caused by exposure in the service. He also states that the illness resulted in hemorrhage of the lungs, and that claimant was still suffering therefrom in April, 1874, the date of his affidavit. This witness confirms the statements of Dr. Bartlett and claimant's cousin in every particular.

Wm. G. Douglas testifies that he was captain of claimant's company, and that claimant was sick while in the service, caused by exposure to cold and rain.

D. L. Degoe, examining surgeon by appointment of the Commissioner of Pensions, under date of April 7, 1875, certifies that Givens is suffering from disability resulting from hemorrhage of the lungs. The said surgeon states:

On examination I find no disease of the lungs, but there is great irregularity of the action of the heart, intermitting in its beats and regurgitation of blood through the left auricle-ventricle opening and a gurgling sound along the course of the ascending aorta and pulmonary artery; the pulse is feeble and irregular, intermitting every third beat, fifth beat, sixth beat, and eighth beat—

and that the applicant's disability is three-fourths.

Christopher Pearsons, another examining surgeon, states:

I find claimant's general physical condition good; action of the heart, first sound louder than natural, second sound below the natural standard. Upper portion of left lung emphysematous, with crepitations; cough dry; vascular murmur distinct over lower and posterior portions of both lungs.

He rates him at one-half disabled.

Accompanying the original declaration for pension are two certificates of examining surgeons Missouri State Militia, April 18, 1863, and April 1, 1864, certifying that claimant was at the dates stated suffering from disability occasioned by hemorrhage of the lungs.

The War Department contains no records of the Fifth Missouri State Militia.

The report of the adjutant-general of the State of Missouri shows that claimant was in said service in said regiment at and during the time he alleges.

The Commissioner of Pensions rejected the claim because in the opinion of the Commissioner it is barred by section 4693, Revised Statutes, on the ground that the claimant was not in the service of the Government of the United States at the time the disease was contracted.

In the opinion of the committee the claimant is entitled to a pension, and we therefore report a substitute for the bill and recommend that it do pass.

M. D. WILLIAMS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT: •

[To accompany bill H. R. 5642.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2380) granting a pension to M. D. Williams, have considered the same, and report:*

The said M. D. Williams was enrolled on the 12th day of December, 1863, in Company C, Twelfth Regiment Indiana Volunteers, and mustered into service as captain of said company on December 16, 1863. It further appears that while a member of said command, and in line of his duty, at Huntsville, Ala., on the 19th September, 1864, the said Williams, the company being engaged with the enemy, received an injury in the groin, by his horse rearing with him, which resulted in complete hernia of the right side. This fact is most conclusively shown by the affidavits of Dr. Samuel R. Platt, surgeon of said regiment; Edward Anderson, colonel of said regiment, and Isaac C. Derrian, Henry Cole, George Manwarren, and Myron L. Spear, members of said company, of which claimant was captain.

Williams applied for pension at the Interior Department soon after his discharge. His discharge was of date 17th August, 1865, it having been granted him upon certificate of disability from the regimental surgeon. The claim was allowed by the Pension Office, and certificate No. 53,879 forwarded to him; the rate of pension was fixed at \$20 per month, which was regularly paid him till September 13, 1869, when the Commissioner of Pensions ordered it to cease. This action of the Commissioner was prompted by a private letter, to him addressed, which stated that Williams had hernia prior to his enlistment. A special agent of the Pension Office was dispatched to Indiana and called before him the writer—one Gates—of said letter, who knew nothing of the charge personally, but said he had *heard* Williams was so afflicted before the late war. Neither could said Gates refer him to anyone who knew the fact. Claimant's brothers were examined by said special agent, and their knowledge of his condition seemed to be quite vague, though they stated, and claimant did not deny, that prior to his enlistment Williams had a slight rupture on his left side. One other witness stated that years before the late war he examined Williams's truss, and he thinks it had two pads. Williams himself states that previous to his enlistment he had slight hernia in left side, but it afforded him little inconvenience and did not disable him. The Pension Officer refused to restore him to the pension-roll upon the report of the special agent.

The wife of claimant affirms that previous to the war his hernia was very slight and on the left side. His son makes the same statement.

Colonel Anderson, of claimant's regiment, states that to his personal knowledge Williams was ruptured at the battle of Huntsville, and that prior to that action the claimant was one of the most brave and efficient soldiers in the command, and afterward, by reason of his injury, he was unfit for duty.

Dr. Platt states positively that to his personal knowledge Williams was ruptured in the right side in said action, and that his injury was permanent.

The examining surgeon appointed by the Pension Office states that his disability is hernia of the right side.

After a careful examination of all the testimony, the committee think that the soldier has made out his case by a preponderance of the evidence, and, though it may be true the soldier ought not to have been enlisted in the service, we are of opinion he has shown a right to pension from injuries received in the service, and should be restored to the roll from which his name was wrongfully stricken.

The committee recommend the passage of the accompanying substitute for the bill.



MARTHA A. WILLIAMSON.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 953.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 953) granting a pension to Martha A. Williamson, have had the same under consideration, and submit the following report:*

It appears that the said Martha A. Williamson is the widow of Amos Williamson, late lieutenant-colonel of the Eighth Regiment Missouri State Militia, who was mustered into said service March 1, 1862, as first lieutenant and adjutant, and on the 2d May, 1862, was promoted to lieutenant-colonel, which rank he held at the time he was mustered out of the said service.

The medical certificate of disability shows that he was suffering from bronchial affection in February, 1863.

Dr. Peter Burns states that he was examining-surgeon in the recruiting service of the Eighth Missouri State Militia, and, as such, became intimately acquainted with Colonel Williamson, and that his acquaintance continued during the four months the regiment was in the service in 1862; that the said Williamson was afflicted with sore throat and cold; that he treated him therefor, and that he recovered and was in apparent health when he, the doctor, left the command. The doctor also states that when the soldier entered the service he was a sound man physically. The said doctor makes two other affidavits, in which he says the said Williamson contracted his disease while in the service and in the line of his duty, in the early part of the year 1862.

Dr. William Denby states that he was well acquainted with Williamson before his service in the militia, and that he is enabled to state from his personal knowledge that claimant's husband did not have any bronchial affection before he was mustered in the said service, and that, to his personal knowledge, the said disease was contracted by Williamson while in the service and line of duty. He further states that the disease made steady progress from the time of the soldier's discharge till September, 1867, when the affiant ceased to treat him.

Dr. Earheart states that he treated the soldier from 1867 till 1870; that the disease continued to grow worse and worse and finally proved fatal; and that by his death the wife and children of the soldier are left penniless and helpless.

Dr. Teasor states that he treated Williamson from 1870 till his death in 1872; that his disease was a bronchial affection, and that it was the occasion of his death.

The Commissioner of Pensions rejected the claim because he was not satisfied from the testimony that the disease originated in the service.

The bill passed the House of the Forty-fifth Congress.

The committee are of opinion that the claimant presents a meritorious case, and we recommend that the bill do pass.

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EDWIN F. LEWIS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

## REPORT:

[To accompany bill H. R. 31.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 31) granting a pension to Edwin F. Lewis, have considered the same, and report:*

It appears that the said Lewis was, on the 13th August, 1862, appointed a third assistant engineer of the United States Navy, and afterward promoted to second assistant engineer in said service, and was honorably discharged therefrom on the 24th of September, 1865.

He applied to the Commissioner of Pensions to be placed on the pension-roll in March, 1870. He alleges that while in the service and in line of his duty, and while he was acting as second assistant engineer on board United States steamer *Fahkee*, at Fernandina, Fla., in May, 1865, he was attacked with "hæmoptysis" or "blood-spitting," caused by the excessively warm weather incident to the climate and the over-exertion as engineer aforesaid.

Claimant's soundness, physically, before enlistment or appointment, is established by the affidavits of his parents and of Francis R. Webb, late acting master United States Navy. The said Webb, in his affidavit, states that claimant joined the *Fahkee* at the Brooklyn navy-yard, August, 1863, and that he was severely afflicted while serving in the engine-room of said steamer at Fernandina, in May, 1865, the weather being excessively hot, and that the said steamer was at that time short of competent engineers, and claimant was obliged to serve more than the usual time in the engine-room, and in consequence of that fact he was attacked with lung-disease, which did not yield to medical treatment.

Examining Surgeons Porter and Allen report that they examined claimant in November, 1870, and that he was afflicted with hæmoptysis and is incapacitated for obtaining his subsistence by manual labor "one-half." They further report that the disability is permanent and progressive.

The Pension Office rejected the claim because it was barred by section 4717, Revised Statutes, which requires record-evidence from the War or Navy Department of disability, if the claim is not prosecuted to successful issue within five years from its filing. The Committee on Invalid Pensions of the Forty-fifth Congress made a favorable report on this bill.

In the opinion of the committee the claimant has exhibited an equitable right to a pension, and they recommend that the bill do pass.





JOHN T. PENNINGTON.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 5643.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 934) granting a pension to John T. Pennington, have had the same under consideration, and submit the following report :*

It appears from the original declaration for pension filed by said Pennington in the Interior Department that he was a private in Company B, Fiftieth Regiment Missouri State Militia; that he was enrolled in said service in July, 1862, and was honorably discharged therefrom by surgeon's certificate, at Kirksville, Mo., date not stated. It further appears from said declaration that while said regiment was on a march to re-enforce United States troops near Callis, Mo., on the 9th day of August, 1862, while riding down a hill, he was badly ruptured, and that he was treated by Surgeon S. P. Knight, of the board of enrollment.

An additional affidavit of Pennington shows that he served in no other military organization during the war; that he never received any formal discharge from his command, because when he was injured he was relieved from duty by his captain and sent home. He was again called out for military service in 1864, but upon examination of the surgeon he received a certificate of discharge, signed by the surgeon of board of enrollment, which stated his disability to be rupture (the certificate is on file in the papers forwarded to the committee by Pension Bureau). He says that when he received the injury he was under the immediate command of Maj. John B. Dodson, of Eleventh Missouri State Militia Cavalry, United States Volunteers. He further affirms that the Missouri State militia never received any discharges; that when their services were no longer needed they were disbanded and sent home.

In evidence is the affidavit of Dr. Charles Atterberry, who affirms the soundness of Pennington at the date of his enrollment in the militia.

Maj. John B. Dodson swears that the petitioner, while in the line of his duty, and without fault on his part, and while on detached service from his regiment with a portion of the affiant's cavalry, when marching from Macon City to Callis, Mo., in riding very rapidly down a hill, was badly ruptured on both sides. Dodson was major of Eleventh Missouri State Militia.

The affidavit of Dr. Basil C. McDarret states that he is a practicing physician, and has been for nine years; that he made a personal exam-

ination of Pennington, whose family physician he is, and he finds that he is badly ruptured on both sides.

John Burton, examining surgeon by appointment of the Commissioner of Pensions, certifies, under date of 1877, that claimant is \$12 disabled for obtaining his subsistence by manual labor, and that the disability is permanent. He further certifies that claimant "has scrotal hernia on both sides, neither of which is reducible; the tumors when down are each fully three inches in diameter, and extend to the lower part of the scrotum." Said surgeon states that claimant asserts that he cannot wear a truss, and that the tumors are painful. The tumors are always present except when pressed back.

There is no record of Fiftieth Enrolled Missouri Militia in the War Department.

The Interior Department rejected the application for pension because it was not shown to the satisfaction of the Commissioner of Pensions that the applicant was in the service of the United States when he received the injury. That Pennington was in said service is shown by the report of the adjutant-general of the State of Missouri.

The committee are of opinion that the claimant has exhibited a right to pension, and we recommend the passage of the substitute accompanying this report.



## COMPENSATION AND EXPENSES OF PENSION AGENTS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

### REPORT :

[To accompany bill H. R. 3303.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3303) entitled "A bill in relation to the compensation and expenses of pension agents," having had the same under consideration, ask leave to submit the following report :*

That this bill provides for a change of the existing law governing salaries paid and expenses allowed to pension agents, as follows:

That the salaries of pension agents shall be \$4,000 per annum, same as at present authorized ; that the compensation for preparing and paying vouchers shall be 14 cents for each voucher prepared and paid. The existing law authorizes a compensation of 15 cents for each voucher prepared and paid in excess of 4,000 vouchers per annum.

This bill further provides for the payment of the actual and necessary expenses for rent, fuel, lights, and other incidental expenses. The law now authorizes the payment of the necessary expenses for rent, fuel, lights, and postage on official mail-matter directed to the departments and bureaus at Washington.

The second section of this bill extends to pension agents the provisions of sections 5 and 6 of "An act establishing post-routes, and for other purposes," approved March 3, 1877, making said provisions applicable to all official mail-matter sent from any of the pension offices.

Upon investigation your committee find that the salary at present authorized is not excessive. The agent is required to give his personal and constant attention to an office disbursing many millions of dollars per annum, for which he is responsible. He is required to give a good and sufficient bond to the government in the sum of from \$150,000 to \$250,000, the sureties to said bond to qualify in double the amount. The agent is also required to make all computations for payment of pensions under the law, and is responsible for their accuracy. He is the only bonded officer connected with the bureau.

The change in the law relating to the amount allowed for the preparation and payment of vouchers is slightly in favor of the agent. It is exactly the same in an agency paying 60,000 vouchers per annum.

Sections 4781 and 4782 of the Revised Statutes provide for the payment to pension agents of an allowance of not exceeding \$4,000 per annum as salary, and an additional compensation for preparing, trans-

mitting, and paying vouchers, including postage, of 30 cents for each voucher so prepared and paid.

By the act of Congress approved June 20, 1874, the compensation for the preparation, transmission, and payment of vouchers was reduced to 25 cents each.

By the act of Congress approved June 14, 1878, a further reduction was made, allowing only 15 cents for each voucher prepared and paid in excess of 4,000 vouchers per annum. It is understood that the provisions of this act, exempting 4,000 vouchers, was declared necessary at the time to prevent a small agency from receiving a greater sum in proportion for its work than the larger agencies, the cause for which is now removed.

It further appears that the pension agent should be allowed the necessary stationery for his office, and your committee so recommend the words *necessary stationery* to be substituted for the words "other incidental expenses" in this bill.

Your committee also find that it is necessary for the pension agents, in order to keep their agencies up to the required standard of efficiency, to pay out some considerable portion of their salaries for postage and clerk-hire; that the receipts of their offices are not sufficient to pay the postage upon official mail-matter and for the employment of the necessary clerks required in their offices.

The law granting compensation for preparing, transmitting, and paying vouchers particularly specifies that this compensation shall cover the item of postage in transmitting vouchers and checks to the pensioner; therefore the pension agent is debarred from the provisions of sections 5 and 6 of the act approved March 3, 1877, providing for the free transmission of all official mail-matter from all departments and their subordinate offices.

The law providing that the compensation received for the payment of vouchers should cover the item of postage allowed, 30 cents for each voucher paid, and although Congress has by subsequent acts reduced this compensation more than one-half, it has not changed the law requiring the agent to pay from the receipts of his office postage upon all official mail-matter directed to the pensioner.

It is believed by your committee that the free transmission of all official mail-matter, which is granted to every department and subordinate office of the government except pension agencies, should be extended to these offices, as provided for in this bill. Your committee therefore report back said bill with the following amendment: In line 11 strike out the words "other incidental expenses" and insert the words *necessary stationery*; and recommend that said bill as amended do pass.

CRAFTS J. WRIGHT.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 752.]

*The Committee on Invalid Pensions, to whom was referred the bill (S. 752) granting pension to Crafts J. Wright, having had the same under consideration, ask leave to report:*

That upon examination they find report No. 37 of the Senate to clearly set forth the facts in this case, and adopt the same as the report of this committee, which is as follows:

[S. Report No. 37, Forty-sixth Congress, second session.]

Mr. INGALLS, from the Committee on Pensions, submitted the following report [to accompany bill S. 752]:

*The Committee on Pensions, to whom was referred the petition of Crafts J. Wright for increase of pension, report:*

The petitioner was colonel of the Thirteenth Missouri Volunteer Infantry, and has been allowed a pension of ten dollars per month, which he alleges is inadequate to afford him the relief to which he is justly entitled. The evidence shows that Colonel Wright is above seventy years of age; that he was fifty-three years old when he entered the service; that he served with distinction in several important engagements, and resigned in September, 1862, on account of physical disability. The condition of the petitioner is such as to render him practically totally disabled, but not "utterly helpless," in the language of the statute. The committee, therefore, recommend the passage of a bill giving the petitioner a pension of thirty dollars per month in lieu of that which he now receives.

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JAMES KING.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill S. 1044.]

*The Committee on Invalid Pensions, to whom was referred the bill (S. 1044) granting a pension to James King, having considered same, ask leave to report :*

That from an examination of the evidence in this case it appears that the facts in the case are clearly stated in Senate report No. 106 upon this bill, and your committee adopt said report, which is as follows :

[S. Report No. 186, Forty-sixth Congress, second session.]

Mr. WHITHERS, from the Committee on Pensions, submitted the following report, [to accompany bill S. 1044] :

The Committee on Pensions, to whom was referred the petition of James King, private Company F, First Regiment United States Infantry, having examined the same, with the accompanying papers, find that the soldier was continuously in service from his first enlistment as a volunteer, in 1861, to the date of his discharge for disability, in 1870, from partial paralysis.

His paralysis came on in 1869. His application for pension was rejected because, in the opinion of a board of examining surgeons, the disability was not incurred in the service and in the line of duty.

The medical evidence in the case is conflicting to some extent. The existence of partial paralysis is fully established, and a degree of mental alienation co-exists. Some of the surgeons attribute his present condition to a virulent attack of syphilis, while others declare that it had no such origin. The existence of the last-named disease prior to the occurrence of paralysis is, in the opinion of the committee, established, but whether the paralysis thus originated is very questionable. In consideration of this doubt, and of the additional fact that the petitioner served throughout the war with credit and fidelity, having participated in the battles of Winchester, Cedar Mountain, and Antietam, in 1862, Chancellorsville and Gettysburg, in 1863, and in Sherman's march, in 1864, the committee recommend the passage of the accompanying bill.

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JAMES T. CHRISTIAN.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 1655.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1655) granting a pension to James T. Christian, having had the same under consideration, respectfully submit the following report:*

We find from an examination of the papers on file in the Pension Office and the evidence presented to your committee that the petitioner was a soldier of the Mexican war and that he served faithfully therein, and that while in that service he contracted the disease of chronic diarrhea, from which he has never been relieved; that he was pensioned for that disability at the rate of \$8 per month, which pension he was receiving up to the time he re-enlisted and was mustered in as second lieutenant of Company A, Eighteenth Iowa Volunteers, August 8, 1862; that he served in that company until December, 1862, when he was taken sick, and on account of his disability, as the records show (chronic diarrhea and hepatitis), he was honorably discharged the service February 11, 1863. He again enlisted and was mustered in as first lieutenant of Company E, Forty-sixth Iowa Volunteers (a one hundred days' regiment) June 10, 1864, and was honorably mustered out with his company September 23, 1864; is reported present for duty from date of muster in to date of muster out in the last-named regiment.

Having returned from his service in the war of the rebellion, and being still afflicted with the disease which he contracted in the Mexican war, he applied to the Pension Office for a restoration of his pension, alleging a continuous existence of his disease of chronic diarrhea.

The Pension Office has repeatedly urged him for a medical history of his disease from the time he surrendered his pension in 1861 to the present, a requirement which he is unable to fulfill in view of the many physicians he has had, some of whom are dead, others removed; and up to the present time he has been unable to furnish the Pension Office with the evidence required.

It seems clear to your committee that there is no doubt of the continuous existence of the disease for which this soldier was originally pensioned. The examinations of the surgeons of the Pension Office show him suffering from the disease almost up to the time of his enlistment. We find him then discharged in 1862 from the Army by reason of the same disease. In 1875, having been ordered before the examining sur-

geon of the Pension Office, that officer reports him "totally disabled with the disease of chronic diarrhea and its results"; and again, February 11, 1880, another examining surgeon of the Pension Office reports him incapacitated for labor from the same cause.

The petition presented to your committee for the restoration of this soldier to the pension-rolls is signed by a majority of the most prominent men of Perry and adjacent counties, in the State of Illinois, all of whom claim to have had personal knowledge of the man and his sufferings.

We believe this to be an entirely worthy case, and one in which injustice has been done a brave soldier. We therefore report favorably upon his petition, and recommend the passage of the bill (H. R. 1655) granting a pension to James T. Christian, as amended by your committee, which amendment authorizes his being placed upon the pension-rolls, to date from the day of his last discharge from the service, September 23, 1864.

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ROBERT P. BOGGS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE B. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3638.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3638) granting a pension to Robert P. Boggs, having had the same under consideration, respectfully present the following report:*

It appears upon examination of the petition and the papers on file in the original pension case and testimony submitted to the committee that the petitioner was a private of Company E, One hundred and sixth Regiment Illinois Volunteers; that he enlisted August 4, 1862, and was discharged August 7, 1863; that he made application for pension August 27, 1864, which was rejected by the Pension Office May 24, 1875, on the ground that "it not having been prosecuted to a successful issue within five years from the time of its filing, and the Adjutant-General declining to make a record in the case, it was barred under section 4717, Revised Statutes." The petitioner alleged in his original declaration that he contracted neuralgia during the winter of 1862-'63 at Jackson, Tenn., while with his regiment, by being constantly exposed to wet and inclement weather, snow, and rain, the disease settling in his neck and shoulders, and rendering his discharge necessary.

He was examined by three examining surgeons of the Pension Office; first in 1864, then in 1866, and finally in 1867. All of these surgeons found the disability, the last-named saying that "it would probably be permanent," and rating him at three-quarters.

The Surgeon-General's reports show the treatment of the petitioner in general hospital from July 7, 1863, to August 7, 1863, for chronic diarrhea. No record of his readmission to hospital. The regimental registers are not on file.

Dr. Ellsworth, the surgeon of the regiment, swears that he—

is acquainted with the petitioner, and that he was discharged on account of disability in the summer of 1863. While he was on duty near Jackson, Tenn., during December, 1862, and January, 1863, the soldier was exposed to severe storms, taking a hard cold while so exposed, causing neuralgia, which he (the surgeon) could not control on the field.

Lieutenant Worthington, of the petitioner's company, swears that—

While the petitioner was in line of duty, guarding the Ohio and Mobile Railroad near Jackson, Tenn., during a series of snow and rain storms, he, from exposure, contracted neuralgia, rendering him unfit for service, and that on account thereof he was discharged.

Dr. Fellows, who was the examining surgeon at Camp Latham, Lincoln, Ill., where the men of the petitioner's regiment were examined before muster, swears that he examined the petitioner and that he was then a sound, healthy man.

Dr. Arterbun swears that he—

was the family physician of the petitioner when he enlisted and knows that he was a sound, healthy man at that time, and that since his discharge he has been under the treatment of a physician constantly; that he is afflicted with neuralgia, which affects his spine and head and at times entirely prostrates him.

All this evidence, which is full and thorough and to the point, was submitted to the Adjutant-General January 19, 1875, with a view to the amendment of the record on the twenty-fourth section of the act of March 3, 1873. The Adjutant-General returned the papers February 26, 1875, to the Pension Office, with the decision that "the evidence is not sufficient to establish the disability contracted as alleged." This decision was rendered after having referred the papers in the case to the Surgeon-General, and these officers gave their decisions on the arbitrary rules and regulations existing in their several bureaus.

Your committee are satisfied from the evidence presented that the petitioner is properly entitled to the provisions of the pension acts; that he went into the service a sound man, that he came out disabled and diseased, and that he contracted the disability in the service of the United States and in line of duty. They therefore report favorably upon his prayer, and recommend the passage of the bill (H. R. 363) granting a pension to Robert P. Boggs.

SAMUEL HAZEL.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. GEORGE B. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2177.]

*The Committee on Invalid Pensions, to whom was referred bill H. R. 2177, having had the same under consideration, respectfully report:*

We find from the papers originally on file at the Pension Office that the petitioner, Samuel Hazel, was a private of Company I, Third Kentucky Cavalry; that he enlisted March 29, 1864, and was discharged June 10, 1865; that he had served one year prior to his last enlistment in Company A, Forty-eighth Kentucky Volunteers. He filed an application for pension October 7, 1869, alleging neuralgia and disease of the lungs; which application was rejected November 2, 1874, on the ground that he was "not disabled as alleged." The allegation of the petitioner is that while on the march from Atlanta to Savannah, Ga., November 1, 1864, he contracted neuralgia and scrofula, caused by severe marching and excessive heat.

The Adjutant-General's records show him present at the time he alleges he contracted his disability. It is shown that he was taken prisoner April 3, 1865, at Mount Olive, N. C.; was returned as exchanged prisoner of war to Camp Chase, Ohio, in April, 1865. None of the records give any evidence of disability, and the Surgeon-General reports that "he was not treated in hospital." The petitioner himself, in an affidavit filed in his pension claim, states that he was not treated at hospital. Two comrades state that "he was in good health at his enlistment; that in December, 1864, while on the march from Atlanta to Savannah, Ga., he contracted what was thought to be scrofula and neuralgia in the face and lower jaw and glands of the throat."

Two other comrades corroborated the statement above given.

The petitioner makes affidavit, under date of July 16, 1873, that he has "made diligent search for the officers of his company and regiment, but is unable to find them."

Dr. W. J. Robertson testifies that he "has known the petitioner ever since he was a boy, and that at the time he went into the service he was a healthy, whole, and sound man; that immediately after his return home in June, 1865, he (the physician) visited him professionally, and found him suffering from neuralgia and scrofula in face and lower jaw and the glands of the throat, and that he is still suffering from the same diseases."

In another affidavit this physician *in extenso* gives testimony to the same effect.

The examining surgeon of the Pension Office, at Golconda, Ill., under date of November 5, 1873, finds the petitioner "totally incapacitated." and describes him as follows: "No swelling of any of the glands at any part of the body. He complains of neuralgia of the neck and face of the right side. The man looks emaciated and anxious, as though he suffered from constant pain. Heart's action hurried and feeble. Slight cough. Throat somewhat irritated. No swelling. Percussion and auscultation over right lung; clear and normal over left. Dull at apex. Inspiration prolonged, expiration spasmodic and jerking. Expectorates blood occasionally. Bowels constipated. Food disagrees with him. Cannot stoop to pick up anything from the ground on account of dizziness. Not able to do work of any kind just now, and not likely to be soon."

From the evidence presented to your committee, we believe that ~~this~~ man contracted disease in the service and that he is still suffering therefrom. We therefore report favorably upon his prayer, and recommend the passage of the bill (H. R. 2177), as amended by your committee. "granting a pension to Samuel Hazel."



ELIZABETH J. COLBERT.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2154.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2154) granting a pension to Elizabeth J. Colbert, having had the same under consideration, respectfully present the following report:*

It appears that the petitioner is the widow of Joseph C. Colbert, who was a private of Company K, One hundred and twenty-third Illinois Volunteers, who died at his home in Illinois, September 26, 1874, from paralysis of the right side. He enlisted August 13, 1862, and was discharged December 18, 1862. His application for pension was filed February 9, 1863, and he was admitted to pension upon that application.

The Adjutant-General's records show the soldier to have been wounded in battle at Perryville October 18, 1862; discharged December 18, 1862. The certificate of disability upon which the soldier was discharged shows him to be "unfit for duty on account of gunshot wound of the lower third of the right arm, fracturing the radius, producing paralysis of the hand."

The widow's application for pension was filed July 28, 1875, she alleging that her husband died from the effect of paralysis of the right side, caused by the gunshot wound of the right arm.

Your committee find the evidence upon which the invalid pension was admitted full and thorough, both oral and record, the examining surgeon who last examined the petitioner finding his arm to be paralyzed. The testimony of Dr. Thomas McMorris, the attending physician at the time the soldier died, gives the cause of death as paralysis of the right side, and says that "said paralysis was immediately developed by reason of a fall, but that it would have developed itself sooner or later independent of said fall, and as a result of the wound received in the service at Perryville, Ky., being a gunshot wound, the large bone of the right arm from the elbow down having been completely crushed, compelling its extraction. He was also severely wounded in the upper half of the same arm, so that the muscular portions thereof were mangled and partially torn away; that said wounds left a constant numbness and deadness in the said right arm, side, and leg, which previous to said fall was gradually developing into paralysis, and that said fall merely precipitated the final catastrophe; that such paralysis, superin-

duced as aforesaid, produced the soldier's death ; that the fall of itself need not have produced any such a serious result, and the soldier would undoubtedly have recovered had it not been for the pre-existing tendency to paralysis." This affiant was the soldier's physician previous to his enlistment, as well as during his last illness.

It is further shown in the evidence that while assisting two neighbors in lathing a new dwelling-house, the deceased soldier suddenly fell to the floor, he being in a standing position at the time (without any apparent cause). Upon being taken up by his associates, it was found that his right side was completely paralyzed, and his death resulted in a few days.

All the evidence in the case before your committee indicates, as does the decision of the physician already quoted, that the death-cause was paralysis of the right arm, caused by the gunshot wound. The rejection by the Pension Office of this claim was that the death-cause " was not the result of the wound for which the soldier was pensioned," a decision which, in the light of the evidence, your committee disagree to, and we believe that petitioner is entitled to her pension as the widow of a soldier who contracted disease in the service of the United States, and in the line of his duty. We therefore report favorably upon her prayer, and recommend the passage of the bill H. R. 2154.



WATSON S. BENTLEY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 57.]

*The Committee on Invalid Pensions, to whom was referred the bill H. R. 57, having had the same under consideration, respectfully submit the following report :*

It appears from an examination of the papers on file at the Pension Office and evidence presented for the consideration of the committee in this claim, that the petitioner is a pensioner at the rate of \$18 per month commencing June 8, 1872; that his disability consists in the loss of his lower jaw, the result of a gunshot wound. The evidence in the case shows that the petitioner is greatly disabled and totally unable to perform any labor, and that he requires partial aid and assistance. His application as made to the Pension Office for an increase of his pension was rejected, notwithstanding the fact that the last examination made before an examining surgeon of the Pension Office finds the petitioner disabled totally, third degree. The description given by the examining surgeon of the petitioner's condition is as follows: "Watson S. Bentley was shot through the lower jaw. The remaining pieces were taken out at hospital and after his arrival home. He has now nothing left but the corrugated cicatrices, leaving an aperture where his mouth was, about half inch in diameter. No mastication; lives upon liquids. The lower jaw is formed of irregular muscular contraction. General health failing from want of sustenance, as the liquids cannot nourish his system. His disability is permanent, and present pension should be continued at its present rate. Total, third grade, \$18 per month, and his pension should be total third degree. In my opinion, his application for increase should be allowed."

In view of the terrible manner in which the petitioner is disabled, and which, as stated by the examining surgeon, is gradually wearing him away, your committee believe that he should be allowed the increase asked for by the bill, and therefore we report back said bill and recommend its passage.



OPHELIA E. SIMMONS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1396.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1396) granting a pension to Ophelia E. Simmons, have had the same under consideration, and respectfully submit the following report :*

It appears from an examination of the papers filed in the original case at the Pension Office, that David A. Simmons, the husband of the petitioner, was a master's mate in the United States Navy; that he enlisted January 1, 1863; that he was discharged September 9, 1864, and that he died September 17, 1864, in hospital at New Berne, N. C., from yellow fever, which he contracted in the service.

The widow's application for pension was filed January 7, 1865, and has been pending ever since, it having been rejected by the Pension Office on the ground that "the disease from which the sailor died was not incident to the service." The records show that prior to his discharge the sailor was "laboring under disease contracted from exposure from the malarial influence of the sounds of North Carolina"; that he was sent to the United States naval hospital, and that he died there eight days after discharge.

In the opinion of your committee the cause of death is clearly due to the service, and it is believed that the petitioner is a proper subject to receive the benefits of the pension laws. Your committee therefore report favorably upon her application, and recommend that the bill do pass.



CATHERINE J. GARRITY.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5644.]

*The Committee on Invalid Pensions, to whom was referred the petition of Catherine J. Garrity, having had the same under consideration, respectfully report:*

It appears that the petitioner is the widow of John M. Garrity, late a private of Company H, Thirty-second Massachusetts Volunteers, who enlisted September 12, 1863, and was discharged October 22, 1864. His application for invalid pension was filed October 31, 1864, and he was admitted to pension February 27, 1866, at \$6 per month, for gunshot wound in the back part of his head, it being thus described by the examining surgeon: "Wound of back part of head, with depression of bone. Is subject to attacks of convulsions, and is incapacitated from laborious work. Suffers from feebleness. Disability, three-fourths." The same surgeon also found "gunshot wound of left leg, just above the internal malleolus, and emerging three inches further up. Apathy and loss of power."

The soldier died July 4, 1874, and the widow's application for pension was filed September 27, 1877, alleging injuries from a fall down a flight of stairs, which was caused from dizziness and a convulsion, resulting in the fall as alleged. The application was rejected January 24, 1878, by the Pension Office, on the ground that the cause of the soldier's death was not the result of wounds for which he was pensioned.

The evidence submitted in the pension case is to the effect that as the deceased was about descending a flight of stairs at his home in Waltham, Mass., he was seized with one of the attacks to which he was subject, and which the examining surgeons say was the result of his wounds, and fell headlong down the stairs, striking upon his head and living only a few hours afterwards.

Your committee are fully of the belief that the sudden attack of vertigo and dizziness which affected the soldier, and which caused the fatal fall, was the result of the wound in the head, for which he was discharged the service, and which was honorably received in battle. We therefore believe that this petitioner is equitably entitled to the benefits of the pension laws, and recommend the passage of the accompanying bill.



MARY S. WEBSTER.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5645.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3397) granting a pension to Mary S. Webster, a widow, and mother of Charles T. Webster, have considered the same, and make the following report :*

It appears in evidence that the said Charles T. Webster enlisted into the military service of the United States in June, 1861. At the battle of Spottsylvania Court-House, in 1864, he lost an arm. For this wound he was discharged and granted a pension, which he continued to draw until he enlisted into the Regular Army in the Forty-second Regiment, United States Army, on the 14th of June, 1867. In this regiment he performed clerical duty altogether. He died in post hospital, Madison Barracks, New York, January 11, 1869, from an overdose of laudanum. His mother, Mrs. Mary T. Webster, claims to have been dependent upon him for support, and asks to be pensioned on account of his death. The said Charles T. Webster was found in a hotel in Sacket's Harbor in a dying condition, with every symptom of opium poisoning. He was taken to hospital, where antidotes were administered, but without success, and his death was recorded on the books of the hospital as occurring from "opium poisoning."

Surgeon Vollum, who attended Webster at the time of his death, certifies that the soldier was in the habit of using laudanum in large doses, and that he has no reason to believe that he took the fatal dose with suicidal intent, but feels convinced that he exceeded his usual quantity on account of intense pain.

Charles T. Greene, captain of Company H, certifies to the deceased soldier's habit of taking laudanum and of his boasting of the quantity he could take, and is certain that he did not intend to commit suicide at the time of his death.

Lieutenant Wilkinson, now on the staff of General O. O. Howard, but formerly second lieutenant of Company H, recollects the fact that the soldier died from an overdose of laudanum, which drug he was in the habit of using as a sedative. He complained much of pain in the stump of his arm. His impression is that as Webster took the dose, as was his custom, in the presence of others, it was not a premeditated act of self-destruction.

The evidence presented in this case to the Commissioner of Pensions

was submitted to the Surgeon-General, who returned it with the opinion "that the evidence in this case warrants a record to show death resulting from wounds received in the service and in line of duty. It is well known that in very many cases mutilations received during the war have led to the habitual use of opiates, and death from an overdose taken to relieve pain consequent upon wounds is held as an accidental consequence of such wounds."

Upon this report the Adjutant-General caused the following record to be made:

Charles T. Webster died January 11, 1869, at Madison Barracks, New York, from the effects of an opiate taken to relieve the pain consequent upon amputation of right arm caused by a gunshot wound received in action May 12, 1864. Death was the result of wounds received in line of duty.

The claim was rejected by the Commissioner of Pensions for the reason that the cause of death was not the result of wounds received or of disease contracted in the line of duty. The rejection was not based upon the ground that the soldier committed suicide, but because he was not in the line of duty, as contemplated by the general pension law, at the time of his death.

The dependence of the claimant upon her son is clearly established, and your committee are of the impression that she is a worthy subject for the benefits of the provisions of the pension law, and in this view agree with the Committee on Invalid Pensions of the Forty-fifth Congress, which reported favorably upon her bill, a copy of which report appears in the papers with this case.

Your committee, therefore, report back a substitute for said bill, and recommend that it do pass.



THOMAS SIGGINS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2333.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2333) "granting an increase of pension to Thomas Siggins," having had the same under consideration, respectfully submit the following report:*

That it is in evidence that the petitioner was a second lieutenant of Company D, Forty-ninth Massachusetts Volunteers, who was wounded by gunshot wounds of the thigh, mouth, and left shoulder, and who is now pensioned at \$18 per month.

From the evidence presented to your committee we find that this man was wounded in a terrible manner at Port Hudson, La., on the 27th May, 1863, his wounds being of the following character: A gunshot wound in the shoulder, striking him in the left arm, running down the arm to midway towards the elbow, leaving him so disabled in his arm that he could not reach any part of his back with his left hand or raise it to his head, and has to be assisted in putting on and taking off his garments; also, a gunshot wound in the face, the ball entering on the right side of his upper lip, thence diagonally and downwards across his mouth, knocking out all the teeth of the upper jaw on the right side, tearing out part of the roof of the mouth, and tearing away part of his tongue; also, wound, ball striking the left side of his lower jaw, shattering the jaw-bone, and coming out of the left side of the jaw and near the throat; also, being wounded by another gunshot wound of the left thigh.

From the statement of the physician now in attendance upon the petitioner your committee find that he has been in attendance upon him since the return of the officer from the Army, and that of his wounds in September, 1863, the physician states that "he has lost the sight of his left eye in consequence of the wounds; that he is often prostrated with severe hemorrhages in consequence of the continuous sloughing about his mouth and throat, and that at times these are alarming, continuing for days and weeks, and, after the hemorrhage is controlled, it takes weeks and sometimes months for the petitioner to gain sufficient strength to enable him to leave his bed. During these attacks he is obliged to have constant medical attendance, and is also subject to great expense for care and nursing." The physician also says he considers him "totally broken down and unfit for any business requiring any physical exertion or mental labor; that since his return from the Army he has

never been able to masticate food, having subsisted entirely on liquids, such as beef-tea, soups, milk, &c." The physician also says that he "considered that he has nothing but constant suffering in the future; every attack of hemorrhage is alarming, and will, undoubtedly, sooner or later prove fatal." He further states that "the amount of pension which the petitioner is now receiving, \$18 per month, will not pay but a small proportion of his actual expenses, it requiring nearly that amount to pay for his medicine alone without any regard to physicians' bills and pay for nursing."

The petitioner, in his statement made to your committee, states that he has applied to the Pension Office for an increase of his pension, but on account of there being no general law providing for disabilities such as his, the Pension Office has no volition in the premises, but has recommended that he apply to Congress for relief.

In view of the horrible nature of the wounds of this man, his constant suffering and expense, your committee think that it is but just that Congress should interpose its authority and increase his pension to such a degree as will at least enable the officer to pay for medical attendance and medicines. Your committee therefore report favorably, and recommend the passage of the bill.

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HENRY J. CHURCHMAN.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill S. 475.]

*The Committee on Invalid Pensions, to whom was referred bill S. 475, report:*

Henry J. Churchman was a surgeon in the United States Army, who alleges that while with Sherman on his march to the sea he was injured by riding a rough horse, which caused urethral stricture, resulting in cystitis, which continues even to this day, disqualifying him from participating in the active affairs of life. His claim was rejected at the Pension Office because the records failed to show the origin of the disability or its treatment in hospital, and the claimant was unable to furnish evidence, by affidavit of an officer or otherwise, that he was treated while in the service. Under the rules the action of the Commissioner was correct, but the case appears to have unusual claims to equitable consideration. Dr. Churchman seems, from many testimonials on file, to be a gentleman of unusually high character and of most exemplary life. The evidence establishes incontrovertibly the fact that he was in perfect health prior to and at the date of his enlistment. He left the service in July, 1865, and the testimony of Dr. Carpenter shows that within one month thereafter he was treated for the diseases for which he now claims pension. He has since that time been continuously under the care of the most eminent surgeons in New York, Philadelphia, and Virginia, and remains an incurable invalid.

The only question for the committee to consider is whether the claimant did contract stricture and cystitis while in the military service of the United States and in the line of duty, and from the cause alleged.

All the other conditions necessary to establish his claim are satisfactorily proved, but upon this point the affidavit of Dr. Churchman is the only evidence. Had there been other proof, the case would have been admitted by the Commissioner. Under all the circumstances the committee regard the claim as one which appeals strongly to the exercise of their discretionary powers, and they therefore recommend that the bill do pass.



HENRY STANLEY WETMORE.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill S. 315.]

*The Committee on Invalid Pensions, to whom was referred the bill (S. 315) granting a pension to Henry Stanley Wetmore, have examined the same and the evidence therewith connected, and report :*

The claimant, October 1, 1862, was appointed mate for duty in the Mississippi squadron, was promoted to acting ensign December 5, 1862, was appointed acting master December 2, 1863, was promoted to acting volunteer lieutenant for gallant and meritorious services, agreeably to recommendation of Rear-Admiral Porter, July 9, 1864, and continued in the service until December 29, 1865, when he was honorably discharged.

July 28, 1864, being then on duty at Cincinnati, Ohio, he was ordered by Rear-Admiral Porter to report to him for duty at Perth Amboy, N. J.; August 4, 1864, he procured a ticket at the railroad office in Cincinnati to proceed to Perth Amboy in obedience to said order. While in the baggage-room of the railroad company, endeavoring to procure a check for his baggage, he had a quarrel with the officer of the railroad company whose duty it was to check the baggage, which resulted in the baggage-master striking the claimant a blow on the head with a hatchet. The blow resulted in the disability for which claimant asks a pension.

A board of examining surgeons, under date of January 27, 1879, report that claimant is totally disabled from obtaining his subsistence by manual labor by reason of said injury to his head, and that said injury is permanent. He made application to the Pension Bureau for a pension, and claim was rejected on the ground "that the injury for which pension is claimed was not contracted in the line of duty."

The only question in the case is whether the cause assigned by the Commissioner of Pensions for rejecting the claim is correct, or, in other words, whether the injury resulting in claimant's disability was received while in the line of duty.

The testimony touching the quarrel about checking claimant's baggage is to some extent conflicting; the claimant and a friend who was in his company at the time, and saw the transaction, throwing the blame entirely on the check-master, whilst the check-master and two or three other employés of the railroad company give evidence tending to show that claimant was partly in fault. But taking all the testimony together

it is clear there was nothing in the conduct of the claimant to justify an assault upon him with a deadly weapon such as the check-master used, or the manner in which he used it, and the legal proceedings that grew out of the occurrence greatly strengthen this view of the case. The check-master was prosecuted for assault and battery on claimant, and pleaded guilty to the charge. The claimant prosecuted a civil suit against the railroad company for damages on account of the injury received, and upon trial the jury awarded him a verdict of \$7,000. The judgment on the verdict was set aside by the supreme court of the State for error in the ruling of the court below as to the liability of the railroad company for the conduct of its employes; but the finding of the jury shows clearly their estimate of the merits of the quarrel between the claimant and the check-master.

Your committee are of opinion that the injury resulting in claimant's disability was received by him in the line of duty. They recommend that the bill be amended by striking out all after the word "Navy" in line 6, up to and including the word "service," in line 9, and that the bill so amended be passed.

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JAMES MORELAND.

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APRIL 7, 1830.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2105.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2105) granting a pension to James Moreland, a soldier of the Mexican war, having had the same under consideration, would respectfully report :*

It appears that James Moreland was a private in Company K of the Fourteenth United States Infantry in the war with Mexico, and applied for a pension November 13, 1873, alleging disability from loss of left eye, hearing in the left ear, and loss of teeth on left side from sunstroke in Mexico. Right eye was injured some at the same time by said sunstroke. The left eye was lost and the other injuries sustained by applicant while in the line of his duty in the Mexican war in June, 1847. The Commissioner of Pensions rejected the claim on the ground that "the records in the Adjutant-General's Office showed no record of alleged disability." While this may be a technical objection to the admission of the claim, the evidence adduced by the claimant goes to prove that the injuries claimed were received while in the service and in the line of duty. In addition to his own sworn statement of the facts, Charles Hopkins states, under oath, "that he was in the same company with James Moreland in the Mexican war; that he helped carry him off the drill-field where said Moreland fell from sunstroke; affiant does not think that Moreland was able for duty any more during the said war; said accident occurred in the latter part of June, 1847." William Gove, who was a soldier in the Mexican war, in the same regiment with the claimant, and who served with him, testifies to substantially the same thing as does Charles Hopkins.

Dr. A. M. Ferguson, family physician to the claimant, testifies that he knew him before he went into the Mexican war, and that he was a sound and healthy man; his eyes both good and sound; was his family physician then, was after his return from Mexico, and is now, and has treated him ever since his return from Mexico for this disability; his eyes were too far gone to be benefited by medicine; and in all things confirms the statement of the claimant. In view of the fact that sixteen only of the claimant's company returned, and that they are all dead except claimant and those two who have testified in his behalf, your committee are of opinion that, all things considered, the claimant is entitled to a pension; they therefore report back the accompanying bill and recommend that it do pass.





JAMES A. DOUGHTY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5186.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5186) granting a pension to Capt. James A. Doughty, having had the same under consideration, would respectfully report:*

That Capt. James A. Doughty was mustered as captain of Company K, First Tennessee Volunteers, August 21, 1861, and was discharged December 18, 1862. He contracted jaundice on or about January 10, 1862, at Somerset, Ky., followed by dropsy, and resulting in a disease of a scrofulous nature, and for this he was discharged from the service; his application for pension was rejected January 1, 1873, on the ground that the ulcers which now afflict the claimant did not result from his military service.

The claimant's statement is sustained by Capt. J. C. Chiles, who swears that he knew claimant in the Army, and that on or about January, 1862, he contracted jaundice, which developed into dropsy and scrofulous ulcers which now afflict him. That he was sound at enlistment is proven by the affidavit of Dr. T. J. Conard, who testifies that prior to enlistment claimant was a sound man, and that soon after he returned from the Army he commenced treating him for large ulcers of a deep-seated and indolent character, which have remained until the present time. This is confirmed by the testimony of Assistant Regimental Surgeon William A. Rogers, of claimant's regiment, who testifies to his soundness at the time of enlistment, and to treating him for the disability in the service and since his discharge. Dr. G. W. Keith swears that he has known claimant for twenty-four years, and that he was a stout, healthy, able-bodied man; that he also treated him in the Army for his disability, and at various times since; he knows claimant intimately and that he has never recovered, and that for the past five years he has been utterly prostrate and in a most deplorable condition, and his life despaired of; and he further testifies that he believes his disability to be the result of disease contracted in the Army. The board of surgeons at Knoxville, Tenn., certify as to his condition and its origin in the Army, and rate his disability as total and permanent.

In view of this testimony, which is all of a medical character and from men skilled and reputable in their profession, your committee are of the opinion that Capt. James A. Doughty should be granted a pension. They therefore report back the accompanying bill and recommend that it do pass.



OWEN M. BROWN.

APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4829.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4829) granting a pension to Owen M. Brown, having had the same under consideration, would respectfully report:*

Owen M. Brown was a contract surgeon in the First Tennessee Light Artillery in the war of the rebellion, and was pensioned for paralysis resulting from cerebro-spinal meningitis on June 20, 1873, at the rate of \$50 per month, which amount was paid to him until August 12, 1877, when he was dropped from the pension rolls by order of the Commissioner of Pensions on the ground that the disability for which he was pensioned was not contracted in the service. This action of the department was the result of a special investigation by an agent of the Pension Bureau, brought about by letters from persons who, for some personal reason, instituted and conducted a series of attacks upon the character of the claimant, and which resulted in the claimant being dropped from the pension rolls.

The evidence in the case shows that the disability was contracted in the service, and that it is the result of an attack of cerebro-spinal meningitis received while in the line of duty about January, 1864. This is sustained by the sworn affidavit of Dr. R. P. Mitchell, surgeon of the First Tennessee Light Artillery, who testifies that he has known Dr. O. M. Brown for over twenty years; was with him in the service, served in the same regiment with him, and said Brown was, all that time, contract surgeon under him, and he (Mitchell) treated him for the disability, and has done so since the war, and knows that his disability has now grown into a permanent and total disability, so much so that he cannot walk, and requires the aid of two persons all the time to assist him in the necessary movements of his body that he is naturally required to make. Dr. John Templeton, himself in an affidavit, says that he knew Dr. O. M. Brown before he entered the service, and has been his family physician since his discharge, and has treated him for this disability, and in all things confirms the statement of Dr. Mitchell. This is also backed up by innumerable affidavits from his neighbors and comrades, and proves beyond question that he received his disability in the service, and that he is now totally disabled.

In view of all these facts your committee are of the opinion that Dr. O. M. Brown should be restored to the pension rolls, and that dropping his name from the rolls was an act of injustice to a worthy man. They therefore report back the accompanying bill and recommend that it do pass.

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**JAMES HUGHES.**

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

**REPORT:**

[To accompany bill H. R. 3393.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3393) granting a pension to James Hughes, having had the same under consideration, would respectfully report :*

James Hughes was a private of Company F, Third Regiment North Carolina Mounted Infantry, in the war of the rebellion, and was granted a pension, for gunshot wound through the neck and shoulder, by the department on the 6th day of June, 1871, at the rate of \$18 per month, which pension was paid to him until the 4th day of September, 1877, when he was dropped from the pension-rolls by order of the Commissioner of Pensions for the alleged reason "that evidence had been received that his wound was not received in the line of duty." The evidence upon which this action was based was brought out by a special agent of the Pension Department, who, in an investigation of the case, secured the testimony of persons who were unfriendly to the claimant, and based what they testified to on "hearsay evidence," instead of personal knowledge of the facts, and when it is all considered does not make a case in the opinion of your committee sufficient to warrant dropping a man's name from the pension-rolls, when all the material evidence in the case shows that the claim is just and meritorious and the claimant entitled to a pension.

That James Hughes did receive his disability while in the service, and in the line of duty, is fully proven by the sworn affidavit of himself and his officers and comrades who served with him. He was wounded under the following circumstances: He was sick with measles in December, 1864, when his regiment was ordered to move to Emberryville, Tenn. He fell in and attempted to keep along with the regiment, but he became too sick to march, and the colonel of his regiment gave him his horse to ride, which he rode for one day, but, becoming too sick to ride, the colonel of the regiment gave him leave to go to his home (which was then about fifteen miles from where the regiment was); this he attempted to do, but in his exhausted condition he was several days in getting to his home. When almost home he was surprised by Confederate scouts, and, while trying to escape, was shot in the neck and shoulder, thus obtaining the disability under which he claims a pension. These facts are substantiated by the sworn affidavits of Samuel Peterson and John J. Cooper, neighbors of his, who were at home when he got there in his

wounded condition, and by the affidavit of John H. Ray, captain of claimant's company, who testifies as to the fact of his being sick with measles and being granted leave of absence by the colonel of the regiment to go home prior to his being wounded on his way home. Captain Ray also testifies that he knew of claimant being wounded by Confederate scouts while thus endeavoring to reach his home.

In view of all these facts your committee are of the opinion that James Hughes is justly entitled to a pension; they therefore report back the accompanying bill and recommend that it do pass.

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WILLIAM F. M. HYDER.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4823.]

*The Committee on Invalid Pensions, to whom was referred bill H. R. 4823, having had the same under consideration, would respectfully report:*

William F. M. Hyder enlisted on the 25th day of September, 1863, as a private in Company H, Thirteenth Regiment Tennessee Cavalry, and was honorably discharged for "disability incurred in the service" on the 15th day of July, 1865, as a second lieutenant of said Company H.

On the 25th of October, 1866, he applied for a pension for disability incurred under the following circumstances:

On or about the first of July, 1864, while his regiment was encamped at Gallatin, Tenn., he was detailed and sent out with others of the regiment on a scout; while on this service, he was thrown from his horse and seriously injured in his back, hips, and loins, which, in the course of time, brought on chronic spinal irritation, affecting the back and lower extremities. On completing this proof, the department granted him a pension at the rate of \$7.50 per month, which was paid to him until December 10, 1873, when he was dropped from the pension rolls by order of the Commissioner of Pensions, for the alleged reason that "his disability existed prior to enlistment in the service." This action of the department was the result of a special investigation, made by an agent of the Pension Department. The agent secured a number of affidavits to prove the existence of the disability prior to enlistment, but in most of the affidavits there exists a want of *positive* knowledge, and read to the effect that "they have heard it said," which in the opinion of your committee is not admissible, for the reason that all testimony should be of a *direct* and *positive* character; besides, there exists in no less than six of the affidavits presented by the special agent a vital defect, which in fact fully destroys their worth and effect; that is, they are executed by mark, without witnesses. The preponderance of the evidence submitted by the special agent is strongly in substantiation of the claim, and seems to be in conformity with the requirements of the regulations laid down by the Pension Office governing such cases, and those affidavits in support of the claim are in addition of the most *positive* character. There does not appear to be any hesitation or doubt in executing the same in the most minute way, and in the opinion of your committee the pensioner has the advantage, even on the report of the special agent. In addition to this, the pensioner produces the affidavits of Dr. Cameron, William

Treadways, J. T. R. Boyd, Lieut. H. M. Walker, William Jenkins, Dr. John Snodgrass, and a number of others, all proving in positive terms the contraction of the disability in the service, and his soundness prior to enlistment. This case seems so well sustained, and is so plainly meritorious, that your committee have no hesitancy in reporting back the accompanying bill, with a recommendation that it do pass.





## JORIAL ONKST.

APRIL 7, 1899.—Committed to the Committee of the Whole House and ordered to be printed.

J. TAYLOR, from the Committee on Invalid Pensions, submitted the following

### REPORT:

[To accompany bill H. R. 5184.]

*be Committee on Invalid Pensions, to whom was referred the bill (H. R. 5184) granting a pension to Jorial Onkst, having had the same under consideration, would respectfully report:*

Jorial Onkst enlisted as a private in Company F, Eighth Tennessee Cavalry, on the 31st day of May, 1863, and served until September 11, 63, when he was discharged. He applied for a pension May 11, 1866, and again March 21, 1879, alleging in his declaration that he contracted chronic diarrhoea at Strawberry Plains, Tenn., December 26, 1864, and was at Sweet Water, Tenn., in August, 1864; and in December, 1864, while on a raid, his feet became badly frozen, causing great pain. His application was rejected by the department October 23, 1879, for the reason that there was "no ratable degree of disability since discharge." That is required to make out a case of "ratable degree of disability" your committee cannot say, but that claimant is clearly disabled and entitled to a pension is proven by the sworn affidavit of Dr. H. B. Hawk, who testifies that at time of enlistment claimant was an able-bodied man, and also that he has been his family physician since 1868, and has treated him yearly for piles and chronic diarrhoea, and has prescribed treatment for his feet, which are badly affected from frost. Capt. Nelson McLaughlin, claimant's company, testifies that at Strawberry Plains, Tenn., in December, 1864, claimant contracted chronic diarrhoea, which reduced him very much; and also testifies that on a raid, in December, 1864, claimant's feet became badly frozen, and that on the Stoneman raid, in April, 65, he was in a bad condition of health, suffering with piles, diarrhoea, and breast complaint.

Dr. C. Wheeler, assistant surgeon of the regiment, testifies to treating him for diarrhoea and hemorrhoids, and during all his service he presented an unhealthy appearance; and he also testifies that claimant has been under his care since his discharge; and he further says that his knowledge of the facts is obtained from professional treatment.

In view of these facts, taken into consideration with all the evidence submitted by your committee, they are of the opinion that Jorial Onkst is entitled to a pension. They therefore report back the accompanying bill and recommend that it do pass.



GEORGE C. CLOUD.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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MR. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2108.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2108) granting a pension to George C. Cloud, having had the same under consideration, would respectfully report:*

George C. Cloud was a private in Company B, in the Fourth Tennessee Cavalry, in the war of the rebellion. He enlisted November 27, 1862, and was discharged July 12, 1865, and was pensioned July 13, 1865, for "disease of the lungs," at the rate of \$4 per month; this was increased to \$8 per month March 4, 1875, and was paid at this rate until June 1, 1875, when he was dropped from the pension rolls by order of the Commissioner of Pensions on the ground that his "disability existed at enlistment." The evidence on which this action of the department was based was the result of an investigation made by a special agent of the department, and consisted of the testimony of persons who had heard claimant's mother say that she was afraid he would die of consumption; and the testimony of individuals who had heard the claimant say prior to his enlistment that he had a pain in his breast. In the opinion of your committee this was slight ground upon which to drop a man's name from the pension roll.

The evidence in the case, as examined by your committee, shows conclusively that he was a sound, healthy man when he entered the service, and that his disability was contracted while in the service and in the line of duty. These facts are proven by the testimony of Dr. G. E. Patten, his family physician prior to his enlistment, who says that "claimant at enlistment had every appearance of a sound, able-bodied man, and was not afflicted with consumption, chronic diarrhea, incipient phthisis pulmonis, or derangement of the pulmonary organs"; this is corroborated by the affidavits of John N. Dolin and James McIntosh, who swear that they were "both members of Company B, Fourth Tennessee Cavalry, and that George C. Cloud was a comrade of theirs, and that they knew him well at the time he entered the Army and had known him all their lives, were raised his neighbors and live his neighbors now, and from all appearances was a sound, healthy man at the time of his enlistment, and if he had any disease of the lungs they never knew it." As to his contracting the disability in the service and in the line of duty, Capt. Thomas H. Early, commanding the company, testifies positively as to the disability occurring in the service, and Dr. E. B. Hale, surgeon of the

regiment, testifies that he was intimately acquainted with claimant's physical disability during his service; that he gave him medical treatment at various times and places, and that he was frequently unable to perform the duties of a soldier in consequence of these attacks of sickness, which finally developed into a lung disease, which now disables claimant.

In view of all these facts your committee are of the opinion that this is a meritorious case, and that George C. Cloud is justly entitled to a pension; they therefore report back the accompanying bill and recommend that it do pass.

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JOHN R. SHULTZ.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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MR. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3627.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3627) granting a pension to John R. Shultz, having had the same under consideration, would respectfully report :*

John R. Shultz was a private in Company F of the Eighth Tennessee Cavalry, and was pensioned April 12, 1873, at the rate of \$4 per month for chronic nephritis and disease of the spine. This was paid until October, 1877, when he was dropped from the rolls on the ground that "his disability had ceased." This action was not in accord with testimony which the claimant brings to prove the continuance of his disability. That his disability still exists and has been continuous is fully established by the affidavits of Doctors Maddox and Morris, who, under date of March 18, 1878, testify that they have known claimant since 1865, when he returned from the Army, and that he was then afflicted with chronic nephritis and disease of the spine, and has been continuously suffering ever since with said disease, and is growing worse, rendering his disability at present at least three-quarters from performing his labors as a farmer.

Henry C. Tryon and Martha Tryon, under date of October 18, 1878, swear that they "have been personally acquainted with claimant since his return from the Army in 1865; he was then afflicted with chronic nephritis and disease of the spine, and continuously to the present; have been his nearest neighbors since 1873, and know his affliction has been continuous; he has not been able to exceed one-quarter degree of labor, sometimes none at all"; and they swear they have ample means of knowing, as they are daily associated with him.

Dr. M. B. Taylor, examining surgeon at Greenville, Tenn., rates his disability as "total and permanent".

Dr. C. B. Evans, examining surgeon at Morristown, Tenn., says "his disability is, after so long a time, probably permanent," and rates him as two-thirds disabled.

In view of these facts, taken into consideration with all the evidence and circumstances connected with the case, your committee are of the opinion that John R. Shultz is entitled to a pension; they therefore report back the accompanying bill and recommend that it do pass.



**ALICE DE K. SHATTUCK.**

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

**R E P O R T :**

[To accompany bill H. R. 3829.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3829) granting arrears of pension to Alice DeKalb Shattuck, having had the same under consideration, would respectfully report:*

Alice De K. Shattuck is the widow of Lucius H. Shattuck, formerly hospital steward in the United States Army, and who died June 29, 1877. She received, and does now receive, a pension as his widow, dating from the date of his death, June 29, 1877. She now applies for arrears of pension from the date of her husband's discharge from the service, February 24, 1867, to the date of his death, June 29, 1877, on the ground that his death was the result of physical disability contracted by him in the service of the United States during the war of the rebellion. That his death was the result of such disability is proven by the action of the department in granting her a pension to date from his death. Therefore, in the opinion of your committee, we think it only just and right that she should receive the arrears provided for in the bill, and report back the accompanying bill and recommend that it do pass.





JOSEPH GRIGSBY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 4511.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4511) granting a pension to Joseph Grigsby, having had the same under consideration, would respectfully report :*

That Joseph Grigsby was captain of Company C, First Tennessee Light Artillery, in the war of the rebellion. He enlisted September 17, 1863, and was discharged August 1, 1865. He was pensioned November 10, 1869, for left inguinal hernia, complicated with varicocele, which pension was paid to him until September 11, 1875, when he was dropped from the pension-rolls by order of the Commissioner of Pensions, on the ground that the disability existed prior to enlistment. This action of the Commissioner was the result of a special investigation made by a special agent of the department, and was mainly composed of *hearsay* evidence, nothing of it being of a *positive* character. The claimant, on the other hand, proves clearly that his disability was received while in the United States service and while in the line of duty. He was disabled under the following circumstances: On May 23, 1865, he was detailed for duty in the office of the adjutant-general of Tennessee, at Nashville; that about the 30th of June, 1865, applicant was en route to telegraph office at Nashville, Tenn., carrying a dispatch for transmittal to Washington, D. C., and was thrown from his horse and badly ruptured, thus incapacitating him for duty. This is corroborated by the sworn affidavit of Col. J. P. Brownlow, who testifies to the origin of disability as above stated. Dr. Jos. Hoffmaster testifies to treating him for this disability at the time it occurred and since, and he and Colonel Brownlow both testify that he was sound when enlisted. Drs. Rogers, Baily, and Mitchell all testify as to his present disability and his soundness prior to enlistment; and the board of examining physicians at Washington City (where he was examined in June, 1874), and the board of examining surgeons at Rutledge, Tenn., before which he was repeatedly examined, all join in certifying that he is suffering from double hernia, to acquired while in the military service of the United States.

In view of these facts, taken into consideration with other evidence examined by your committee, they are of the opinion that this is a meritorious case, and that Capt. Joseph Grigsby is entitled to a pension. They therefore report back the accompanying bill, and recommend that it do pass.



URIAH L. SQUIBB.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT :

[To accompany bill H. R. 4828.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4828) granting a pension to Uriah L. Squibb, having had the same under consideration, would report :*

Uriah L. Squibb was a private in Company D, of the Eighth Tennessee Cavalry. He enlisted September 25, 1863, and was discharged September 11, 1865. He was pensioned at the rate of \$2 per month from September 12, 1865, for chronic diarrhea and general debility, which amount was paid to him until June 4, 1871, when his pension was increased to \$6 per month, which was paid him until September 30, 1879, when he was dropped from the pension-rolls by order of the Commissioner of Pensions upon the ground that a special investigation of his case showed that disease of the lungs and chronic diarrhea for which he had been pensioned had ceased to exist. This investigation of course could not possibly have been a very good ground upon which to base facts sufficient to drop this man's name from the rolls, for the reason that this disease, chronic diarrhea and weakness of lungs, is something that is not known to neighbors, unless medical experts, could not possibly have any clear and positive knowledge of, and their testimony that his disability had ceased could not in any reason be accepted as against that of the claimant himself and his medical examiners. The board of examining surgeons at Jonesboro, Tenn., in every examination made certify that he is still suffering in consequence of disease of lungs and diarrhea, and the disability originates entirely from the disease for which he was originally pensioned, and both diseases are permanent."

In the opinion of your committee the testimony of the claimant and the examining surgeons of the government at Jonesboro, Tenn., should have more weight than the *ex-parte* testimony of neighbors whose knowledge of disease and its likelihood to cease would necessarily be limited, and the result of speculation, more than of any positive knowledge of the subject. Your committee, in view of these facts, taken into consideration with other evidence examined in the case, are of the opinion that Uriah L. Squibb should be granted a pension; they therefore report back the accompanying bill and recommend that it do pass.



## HENDERSON LADY.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

### REPORT:

[To accompany bill H. R. 4512.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4512) granting a pension to Henderson Lady, having had the same under consideration, would respectfully report:*

That Henderson Lady was a private in Company D, First Tennessee Cavalry. He enlisted on the 8th day of November, 1861, and was discharged April 15, 1865, after serving nearly four years. He had pneumonia at Louisville, Ky., in February, 1863, which settled in his head and eyes and resulted in total blindness. He was pensioned by the government at the rate of \$50 per month June 12, 1876, which pension was paid to him until March 4, 1877, when he was dropped from the rolls by order of the Commissioner of Pensions on the ground that his disability was not due to the military service. This action was the result of an investigation made by a special agent of the department and consisted mainly in the testimony of persons who knew but very little about the matter except what they had heard. As a sample of its conflicting character, your committee mention that in twenty-seven affidavits taken by the special agent, twenty-one of them testify that his eyes were sore in the service, and six of them testify that they were not; fifteen testify that his eyes were sore at discharge, and eleven that they were sound; twelve of them testify that his habits are good, and eight of them that they are bad. None, however, testify with any positiveness upon any of these points.

Col. J. P. Brownlow, Maj. B. Smith, and Capt. W. A. Kidwell all testify to the contraction and existence of disease of eyes while claimant was in the service.

Drs. Kirk and Bates testify that they treated him for said disease while he was in the service.

Dr. Rader testifies that he treated him for said disease from date of discharge to 1867.

Dr. Kirk testifies that he treated him for said disease in 1867 without success, and that he finally lost his eyesight and is now totally blind.

In view of these facts, which seem well sustained, your committee are of the opinion that Henderson Lady should be restored to the pension rolls; they therefore report back the accompanying bill and recommend that it do pass.



JAMES G. WILLIAMS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5646.]

*The Committee on Invalid Pensions, to whom was referred the petition of James G. Williams, praying the granting of arrears of pension, having had the same under consideration, would respectfully report :*

James G. Williams was a scout and guide in the United States Army during the war of the rebellion, and was pensioned by special act of Congress June 15, 1878. He made application for arrears of pension under the act of March 24, 1879, and was rejected on the ground that the bill granting arrears of pension did not apply to cases pensioned by special act of Congress. Your committee are of the opinion that the pensioner should have arrears of pension in common with those pensioned under general laws; they therefore report favorably, and recommend that the accompanying bill be passed.







JOHN RYAN.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5647.]

*The Committee on Invalid Pensions, to whom was referred the petition of John Ryan, of Pottsville, Pa., praying for a pension on account of disability incurred while in the military service of the United States during the late war, having had the same under consideration, would respectfully submit the following report:*

It is in evidence that John Ryan, on the 26th day of April, 1878, filed his application for a pension under the pension laws of the United States in the office of the Commissioner of Pensions, and that the same was rejected on the 27th day of August, 1878, on the ground that he was not disabled from manual labor by reason of an alleged shell-wound in the abdomen.

The record of the petitioner as a soldier is shown by certificates from the Adjutant-General's Office, dated April 10, 1879, and filed with the committee, and is as follows, to wit:

On the 26th day of April, 1861, he was mustered into the service as corporal in Company I, Sixteenth Pennsylvania Volunteers, to serve for a period of three months, and was mustered out July 30, 1861.

On the 16th of August, 1861, he was mustered in the service as a sergeant in Company H, Sixty-ninth Pennsylvania Volunteers, to serve for a period of three years.

On the 8th of November, 1862, he was promoted to the position of second lieutenant, and at the battle of Fredericksburg, Va., December 13, 1862, received a contused wound (by explosion of shell) over the region of the liver.

On the 1st day of May, 1863, he was promoted to the position of first lieutenant, and participating in the battle of Gettysburg, Pa., was captured during that engagement, on the 3d of July, 1863; confined at Richmond, Va., on the 8th of July, 1863; admitted to hospital at Richmond, Va., August 11, 1863, with dysentery; on the 7th day of March he was paroled, and on the 30th day of June, 1864, was admitted to officers' hospital at Annapolis, Md., suffering from ulcer of left leg, over tibia, caused by wound from a spike, and also suffering from scurvy; on the 9th of July, 1864, he was honorably discharged from the service on account of physical disability.

The evidence of his disability is embraced in the following testimony, to wit:

1st. Extract from company rolls from Adjutant-General's Office, dated August 7, 1878, states as follows: "A medical certificate, dated February 5, 1863, states that he is suffering from the effects of a contused wound over the region of the liver, received at the battle of Fredericks-

burg, affecting the stomach and impairing the digestion to such a degree as to compel him to reject food."

2d. Medical certificate signed by John Neill, surgeon United States volunteers, and approved by John Campbell, surgeon to medical division, U. S. A., and dated March 31, 1864, certifies that Lieutenant John Ryan, Sixty-ninth Regiment Pennsylvania Volunteers, is a paroled prisoner from Libby Prison, suffering from scurvy and unfit for duty by reason of said disease.

3d. Medical certificate, dated April 20, 1864, of John Neill, surgeon United States volunteers, and approved by Jonathan Letterman, surgeon and medical director, U. S. A., certifies that Lieut. John Ryan, Sixty-ninth Regiment Pennsylvania Volunteers, a paroled prisoner from Libby Prison, is suffering from scurvy, and unfit for duty.

4th. Medical certificate, dated May 2, 1864, signed by W. H. Drury, surgeon, U. S. A., and approved by D. Stanton, surgeon and medical director, certifies that First Lieut. John Ryan, Sixty-ninth Regiment Pennsylvania Volunteers, is suffering from scurvy and general debility, with ulcer on left leg, *the result of nine months' imprisonment in Libby Prison.*

5th. Medical certificate from John T. Carpenter, United States pension surgeon, dated at Pottsville, Pa., April 4, 1874, certifies that John Ryan is unable to procure a livelihood by manual labor on account of physical disability contracted in the service of United States Army, and from which he still suffers.

6th. Medical certificate from James Record, M. D., dated at Washington City, June 21, 1878, certifies that he has attended Lieut. John Ryan professionally during several attacks of inflammatory rheumatism, the result of exposure in the field during the late war, camping out on wet ground in stormy weather, and suffering induced by long confinement in prison during said war, which said rheumatism is of a chronic and ineradicable form, requiring but cold, fatigue, or exposure to develop at any time.

7th. Certificate of James O'Reilly, formerly lieutenant-colonel of the Sixty-ninth Regiment Pennsylvania Volunteers, a declaration under oath, in which he declares that he was personally acquainted with the petitioner, John Ryan, at the time of his enlistment into the military service of the United States; that he was at the time sound of body and mind and in such good physical condition as to be accepted as one fitted to perform all duties required of a soldier, and that he performed all such duties faithfully and well until taken prisoner at Gettysburg, Pa., July 3, 1863. He further testifies that First Lieut. John Ryan was wounded in action at Fredericksburg, Va., December 13, 1862, and honorably discharged July 9, 1864, on account of disability contracted while in the line of duty and in the military service of the United States.

Under the foregoing statement of facts, the testimony of surgeons in the military service of the government, while the claimant was in said service, and the certificate of medical men since his discharge from said service on account of disability, together with the fact that he has but one leg (having lost the right leg above the knee after his discharge from the service by a railroad accident), and the fact that for nine months he remained a prisoner in the Libby Prison at Richmond, Va., thereby weakening his constitution; also in view of his long and honorable service during the war, and his wounds in said service, the committee believe him to be entitled to the pension prayed for, and therefore return the petition to the House, and recommend the passage of the accompanying bill.

ANDREW J. MARSHALL.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5648.]

*The Committee on Invalid Pensions, to whom was referred the petition of Andrew J. Marshall, praying for an increase of pension, having had the same under consideration, would respectfully report:*

That Andrew J. Marshall was a soldier in Company B, Eighth Tennessee Cavalry, in the service of the United States during the war of the rebellion; he was placed upon the pension roll for disabilities incurred in the service and in the line of duty at the rate of \$8 per month, and aid at the Knoxville Agency. Afterward his pension was increased to \$14 and again to \$24 per month, by reason of his increased disabilities. Afterward, on account of some irregularities in the conduct of the examining surgeon, his pension was reduced to \$6 a month, which action did him a manifest injustice, for the reason that his disability is permanent and increasing. This is proven by the certificate of the examining board of surgeons at Jonesborough, Tenn., who under date of April 25, 1879, certify that his disability is total, and rate him as being entitled to \$16 per month, and the affidavits of M. G. Waddle and James A. Trims, who, under date of March 27, 1880, testify that he is unable to perform manual labor, and has hemorrhage of the lungs nearly all the time, and that he cannot live very much longer. Dr. James A. Leming testifies, under oath, March 27, 1880, that he is the family physician of A. J. Marshall, and that he has phthisis pulmonalis; that both lungs are affected, the middle and lower lobes of the right lung being badly affected and partially destroyed, also the upper lobe of the left lung is now being filled with tubercles and becoming solidified; Dr. Leming also testifies that he is unable to do any manual labor, and is likely to die at any time.

In view of these facts, which seem to be positive and conclusive, your committee are of the opinion that A. J. Marshall should have a pension equal at least to the amount he was rated for by the Jonesborough examining board, that of \$16 per month; they therefore report favorably, and recommend the passage of the accompanying bill.



SARAH J. GOSS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5649.]

*The Committee on Invalid Pensions, to whom was referred the petition of Sarah J. Goss, asking the payment of arrearages of pension, having had the same under consideration, would respectfully report:*

That Sarah J. Goss was pensioned by a special act of Congress June 18, 1878, at the rate of \$15 per month. On the 14th day of March, 1879, she filed an application for "arrears of pension" under provisions of acts approved January 25 and March 4, 1879, which was rejected on the 25th day of October, 1879, by the Commissioner of Pensions on the ground that acts providing for arrears of pension only applied to cases where pensions had been granted under the general laws regulating pensions, and that persons pensioned under a *special act* of Congress are not entitled to any arrears.

Your committee are of the opinion that the petitioner is justly and equitably entitled to "arrears of pensions" just the same as if she had been pensioned under the general laws regulating pensions, and that the mere fact that she was pensioned by a special act of Congress is no bar to her receiving whatever arrears of pension she may be entitled to. They therefore report favorably, and recommend that the bill accompanying this report be passed.



ALBIRA TRENT AND CHILDREN.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5650.]

*The Committee on Invalid Pensions, to whom was referred the petition of Albira Trent, praying a pension for herself and children, as the widow and minor heirs of Pleasant Trent, having had the same under consideration, would respectfully report:*

It appears that claimant's husband was a private in Company C, Tenth Regiment, Tennessee Cavalry, and died July 25, 1864, at Annapolis Junction, Md. Her claim for pension was rejected on the ground that there was no record evidence of the service of the soldier on file. This is true, for the reason that he was captured and taken to a Confederate prison before he was mustered into the service of the United States, and when he was exchanged at Annapolis, Md., owing to disease contracted in prison, he died before he could get back to his regiment. These facts are sustained by the affidavit of John Fugate, who swears that he was well acquainted with Pleasant Trent and was in the same service with him, and was also a prisoner of war with him at Richmond, Va., and that they remained there until about June 7, 1864, when they were sent to Annapolis, Md., to be exchanged, and that Pleasant Trent, while at Annapolis, died of disease contracted in prison. This is sustained by the records of the Surgeon General's Office, which report, "Private Pleasant Trent, of Company C, Tenth Regiment Tennessee Cavalry, is reported to this office by Assistant Surgeon C. Bacon, jr., as having died July 25, 1864, Annapolis Junction, Md., of scurvy." This seems to fully show the service of the soldier; and that his widow and children should not be debarred from the pension they are *equitably* entitled to seems to be only a matter of justice.

There seems no question in the case except the failure to be properly mustered into the service; that the soldier was prevented from doing this was brought about by circumstances over which he had no control, namely, his capture by the Confederate forces, his incarceration in prison, and his death before he could get back to his regiment.

In view of these facts, your committee are of the opinion that his wife and children should be granted the pension they seem so justly entitled to. They therefore report favorably, and recommend that the bill which accompanies this report and petition do pass.





JOHN L. BARTLEY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

## R E P O R T :

[To accompany bill H. R. 5651.]

*The Committee on Invalid Pensions, to whom was referred the petition of John L. Bartley praying for arrears of pension, having had the same under consideration, would respectfully report :*

That John L. Bartley was pensioned by special act of Congress, approved July 16, 1876, at the rate of \$6 per month, on account of ulcer on right leg, and applied for arrears of pension due him under the provisions of the act of January 25, 1879. His application was rejected by the Commissioner of Pensions on the ground that the act of January, 1879, granting arrears of pension only applied to those pensioned under general laws, and could not be used in favor of those pensioned by special act. Your committee are of opinion that there should be no difference between persons pensioned under general laws and those pensioned under special acts. They therefore report favorably, and recommend that the accompanying bill be passed.



## HEIRS OF HORACE A. CHAMBERS, DECEASED.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

### REPORT:

[To accompany bill H. R. 5652.]

*The Committee on Invalid Pensions, to whom was referred the petition of William O. White, guardian of the minor heirs of Horace A. Chambers, deceased, having had the same under consideration, would respectfully report :*

That it appears in evidence that Horace A. Chambers enlisted as a private in Company E, Fourth Tennessee Cavalry, on the 13th day of February, 1863, and died of pneumonia in the service of the United States in the line of duty on the 2d day of April, 1863. The claim of William O. White, guardian of the minor heirs of the soldier, for pension, was rejected on the grounds that the muster-in rolls of the company did not show the soldier's service. The soldier's service is clearly established by the sworn affidavit of the captain of the company, C. D. Champion, and that of Lieut. O. G. Frazier, who enlisted him, and the affidavits of Drs. D. G. Cooper and B. W. Padgett, who examined him and passed him for enlistment. The records in the Surgeon-General's Office show the following: "Horace Chambers, Company E, Fourth East Tennessee Cavalry, was admitted to No. 9, general hospital, Nashville, Tenn., March 20, 1863, diagnosis 'pneumonia,' and died April 2, 1863, of pneumonia," thus clearly proving his death as a member of Company E, Fourth East Tennessee Cavalry. In addition to this the Treasury Department of the United States considered the proof of his service well made out, for under date of April 27, 1868, the Second Auditor of the Treasury certifies "that this office has issued Treasury certificate No. 275,200 in favor of Mr. W. O. White, guardian of minor children of Horace A. Chambers, late a private in Company E, Fourth Regiment Cavalry Tennessee Volunteers, allowing him pay to include the 2d day of April, 1863, on account of the service of said soldier."

Now it is fair to presume that if his service was sufficiently well proven for the Treasury Department to pay him back pay and bounty "on account of the service of said soldier," it is equally good ground upon which to presume that his minor heirs are entitled to the pension which is rightfully due them on account of the death of their father in the service of the United States. In view of these facts taken into consideration with the evidence that these children have *now* for many years been deprived of their just dues from the government, your committee report favorably on the petition, and recommend that the accompanying bill be passed.



ROSETTA L. MCKAY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill H. R. 534.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 534) granting a pension to Rosetta L. McKay, having had the same under consideration, beg leave to submit the following report:*

The committee find, from the papers filed in the original pension claim, that the petitioner is the mother of Fred. A. McKay, who was a lieutenant of Company E, Forty-first Regiment Ohio Volunteers; that the officer was a pensioner; that he entered upon his second enlistment February 7, 1863, and was discharged November 22, 1864; that he died December 6, 1871, his disease being consumption.

The mother's application was filed April 24, 1872, and was rejected May 7, 1873, whereupon the attorney appealed to the Secretary of the Interior, who reversed the decision of the Pension Office, which was that "the fatal disease did not originate in the service." The case was investigated by a special agent of the Pension Office, upon whose report it was rejected finally by the medical referee, February 9, 1880, on the ground that "the consumption of which this man died originated after the service."

The facts in the case are as follows: The officer returned from the service in 1864 wounded in the hand, upon which wound he was pensioned. He never made a claim for pension for any other ailment, but the testimony of his comrades and of his family physician is positive that at the time of his enlistment he was a thoroughly sound and hearty person. Their statements are corroborated by that of the regimental surgeon, who fixes the time and place when the officer contracted chronic diarrhœa, and the manner in which he was affected by that disease while he was in the service. It is clearly shown by sworn testimony from the family physician, friends, and associates, and by that of the petitioner, the mother of the officer, that he was suffering from chronic diarrhœa at the time of his discharge.

Dr. Turrill, a physician of twenty-five years' experience, testifies that he began treating the officer immediately upon his return from the Army with chronic diarrhœa, that his disease was continuous, and that it would not yield to medical treatment. The doctor, in several affidavits, swears positively, and quotes many authorities showing the strength of his position, that the disease of chronic diarrhœa was the originating cause of the disease of phthisis pulmonalis, from which the officer died. In order

that his position may be understood, your committee quote from one of his lengthy statements, each of which is but a repetition of the other.

Considering that I had watched Lieutenant McKay from boyhood to manhood; that at the time he entered the Army he was possessed of a strong, vigorous constitution, a finely developed physique, without a blemish; that as a boy and man he was exemplary in his habits; that upon his return home wounded I found him suffering of chronic diarrhœa of some standing, resulting unquestionably from causes incident to his soldier life; that although every endeavor was made to hold the diarrhœa in check, and to recuperate the system by a judicious selection of food and medication, the diarrhœa and emaciation steadily increased; that after a time the appearance of the discharges increased, emaciation, hectic, and other symptoms pointed with certainty to a diseased condition of the lacteal, intestinal, and other mesentery glands; that up to this time there was not a symptom of actual pulmonary complication, no pain, cough, soreness, difficulty of breathing, or unnatural expectoration, neither upon the most careful examination did the lungs present any indication of pulmonary difficulty, only apparently a state of prostration, brought about by the alvine discharges and want of nutrition. It was at this time that my warning was given, anticipating what was likely to follow, judging from previous experience. Subsequent events proved the correctness of my prognosis—pulmonary complications arose rapidly, ran their course, until phthisis pulmonalis became firmly seated. Taking into consideration the above facts, I cannot conceive how any other deduction can be drawn but that the diarrhœa was the primary and sole cause of the disease of the lungs.

By a careful examination of the report of the special agent, your committee find that the petitioner resides in the city of Cleveland, Ohio, and that there the investigation was made. The agent found the fact of dependence on the officer positively assured. The question was as to the connection of the death with the disease contracted in the service. The agent seems to have had little faith in the probity of the family physician, and gives the affidavits of several other physicians of Cleveland having a knowledge of the case, one of them the examining surgeon of the Pension Office, and another the surgeon of the deceased officer's regiment. All of them agree that the officer died of consumption, for which they all treated him within a year or two of his death. The surgeon tells of the contraction of the diarrhœa, and gives the opinion that from it the disease of consumption originated. All say that while treating the deceased he (the officer) always expressed the opinion that his malady was a sequela of his chronic diarrhœa. The agent further furnishes testimony as to soundness prior to enlistment, and further shows that before and after service the deceased had been employed in a railroad freight office, which, heated by steam, is low, close, and oppressive. The agent does not show, however, any evidence that would indicate any cause that would originate the disease of phthisis pulmonalis subsequent to the discharge of the officer. To the minds of your committee the report of the agent ought to have been conclusive evidence in favor of the petitioner, but the medical referee of the Pension Office found in it ground sufficient to base the rejection, that the consumption "originated after discharge."

Your committee differ with this decision, and after a careful consideration of the evidence arrive at the conclusion that inasmuch as the testimony shows that the officer was a sound man at enlistment; that he contracted disease in the service; that the family physician swears he suffered continuously from that disease until it developed into consumption; that the declarations made in life by the deceased officer that the disease from which he suffered was the result of the disease he contracted in the Army—all indicate that the petitioner's claim is a just one, and that she is justly and equitably entitled to the benefits of the provisions of the pension laws. We therefore report favorably upon her prayer, and recommend the passage of the bill (H. R. 534) granting a pension to Rosetta L. McKay, as amended by your committee.

MARY JOYCE.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 3603.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3603) granting a pension to Mary Joyce, having had the same under consideration, respectfully report :*

We find from the papers on file in the original pension case that the petitioner, Mary Joyce, is the mother of John Joyce, late a sergeant of Company E, Twenty-second Infantry, who enlisted June 6, 1861, and died August 28, 1861.

The mother's application was filed June 14, 1869, and the claim was rejected July 30, 1870, on the ground that "the soldier was not in the line of duty at the time of his death."

The Adjutant-General's record shows the deceased soldier "Murdered by J. B. Gibbs, brigade commissary, August 28, 1861." Muster-out roll, June 4, 1864, reports him "killed at Garley Bridge, Va., August 28, 1861, by Captain Gibbs, A. C. S."

The testimony of the deceased soldier's major is to the effect that the sergeant had been ordered to report a detail to the said Captain Gibbs from his company, to labor on the breast-work. He complied with the same, and, by request of the men on detail, spoke to Captain Gibbs and requested that they be allowed to cook coffee and eat some before commencing work, as they had been on a forced march. The captain replied, angrily, that such a request was unsoldierly, and ordered him to put his men to work immediately or he would shoot him. The sergeant replied "Shoot and be damned," whereupon said officer shot him, causing almost instant death.

It is further in testimony shown that the deceased was a good and faithful soldier. A copy of the proceedings of the court-martial shows that Captain Gibbs was honorably acquitted of the charge and specifications preferred. From an examination of the report of the trial, your committee find that the deceased sergeant with his men had just returned from a scouting expedition, tired and hungry; that they were ordered to the bridge in question to guard it and throw up fortifications; that, reaching there, the deceased sergeant reported to the officer in command, and the incident occurred as related by the major. The testimony adduced in the defense of Captain Gibbs was to the effect that the men of the command were inclined to mutiny, and that they were in charge of the sergeant whose mother is now applying for a pension.

It also appears by the testimony of witnesses before the court-martial that the sergeant had talked loudly to the captain, and as he was turning away from him the fatal shot was fired which killed the soldier. Although the officer committing the murder was acquitted by military court-martial, and the Pension Office has ruled that the soldier was not in the line of duty when he was killed, still your committee is of the opinion that this aged mother, who is bereft of the services of her only son, who, the testimony shows, was her principal means of support, is entitled to a pension from the government for the loss of that son.

On the trial of the officer, the testimony was to the effect that the deceased was a faithful soldier, prompt in the performance of his duty; that on this occasion he, as well as the other men of his command, was tired and hungry, and that, as they were exasperated at the arbitrary conduct of the officer, they naturally vented their dissatisfaction in loud tones, which might have been smoothed over by the exercise of good judgment on the part of the officer, but that he retaliated in kind, and so excited the man as to cause him to make the remark that he did, as cited in the testimony of the major.

The case summed up is to this effect: That the deceased had been a faithful non-commissioned officer; that in a moment of passion he uttered words which an officer not of his company, but who was temporarily in command of him, considered were insulting, and caused that officer to summarily take his life; that this soldier was the principal means of support of a widowed mother, and that by his death she was cut off from the support which he would have given her. She asks Congress to recompense her for the loss of her son and assist her in her declining years by a pension fixed by law.

Your committee believe this to be a deserving case, and therefore report favorably upon her prayer, and recommend the passage of the bill (H. R. 3603) granting a pension to Mary Joyce.



FREEMAN JOHNSON.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5653.]

*The Committee on Invalid Pensions, to whom was referred bill H. R. 5263, having had the same under consideration, present the following report:*

We find from an examination of the papers in the original pension case, on file in the Pension Office, that the petitioner was a private in Company F, One hundred and forty-fourth Ohio Volunteers. Enlisted May 2, 1864. Discharged August 24, 1864. That he had rendered prior service three months in 1861, and subsequent service from October 6, 1864, to July 7, 1865. He filed his declaration for pension May 20, 1876, alleging, that at Relay House, Maryland, in June and July 1864, while on duty as hospital cook, he contracted disease of eyes. The claim was rejected by the Pension Office January 7, 1878, in the following language:

If any disease of eyes occurred during the service, if not the result of intemperance, it was in all probability prevented from being aided by that habit so long after the disease occurred, that it places the diseased eyes in a chronic, incurable condition, thus shutting out all claim for a pension. \* \* \* Disease of eyes probably caused by intemperance; no positive evidence to show otherwise.

The evidence of the petitioner's company officers and comrades show that he was detailed while in camp, as alleged by him, as company cook; that in pursuing that avocation he rendered his duty faithfully, and that he became very much over-heated and took cold, which appeared to have settled in his eyes, the witnesses setting forth that when he awoke in the morning his eyes were in a very diseased condition; that he was treated for such disease by the surgeon of the regiment is shown by the evidence of the surgeon, who states the disease was continuous to his discharge. That he was sound at the time of his enlistment, that he was free from any disease of the eyes, is shown by the testimony of his family physician and the officer who enlisted him. That he came out of the service with his eyes diseased and that such disease has been continuous to the present time is shown by the evidence of the physicians who attended him, and by the statements of neighbors who corroborate the physicians, that he was laboring with conjunctivitis at the time of his discharge and has been since.

The examining surgeon of the Pension Office, under date of November 21, 1877, finds the petitioner laboring under the disability he claims, and rates him at \$8 per month.

The Pension Office, by correspondence with the family physician and one of the officers of the petitioner's company, elicited the fact, that after his return from the Army the petitioner was much addicted to the use of intoxicating liquors, which may have aggravated his disease, and upon these statements the claim for pension was rejected.

To the mind of your committee the fact is made clear that the petitioner contracted while in the service the disease which has incapacitated him for manual labor since his discharge. The fact of the aggravation of the disease by intemperate habits is a matter altogether of conjecture on the part of the correspondents of the Pension Office, and is indignantly denied by the petitioner.

In view of the facts as presented in this case, your committee believe the petitioner entitled to the provisions of the pension laws, and as such report favorably upon his prayer, and recommend the passage of the bill (H. R. 5263) "granting a pension to Freeman Johnson."

ELISA A. MURRAY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 3602.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3602) granting a pension to Elisa A. Murray, having had the same under consideration, respectfully submit the following report:*

The committee find, from an examination of the papers on file in the original pension claim at the Pension Office, that the petitioner is the mother of Dwight E. Murray, who was a private in the Ninth Ohio Battery, and who was killed while in the service; that he enlisted October 11, 1861, and died September 17, 1863. The mother's application was filed November 10, 1878, and was rejected by the Pension Office August 6, 1879, on the ground that the soldier at the time he was killed was not in the line of duty.

The evidence in the case shows the dependence of the mother upon the soldier and his contributions to her support. The Adjutant-General's report in the case reports him absent without leave since September 17, 1863, supposed to have been captured by guerrillas. He was afterwards marked as a deserter on subsequent rolls. The evidence of officers and comrades on file in the case shows that the soldier with one or two comrades started out with the implied permission of their officers upon a foraging expedition while the company was encamped near Tullahoma, Tenn.; that while out upon such an expedition they were killed by bushwhackers, their bodies found, but no record made of their death on the company rolls. Lieutenant Cowles, of the company, states that the soldier came to his tent with one John Wilson, a comrade, and said they were going foraging in the country. The officer further states that he loaned to the deceased soldier his revolver and that they took with them two good horses. Comrades of the deceased soldier state that they had personal knowledge of the deceased and his comrade Wilson starting out on the foraging hunt, and that it was with the implied permission of their officers, that such permission had been allowed to the men of the command very frequently, and that they did not deem it any transgression of orders, inasmuch as their absence was with the full knowledge of the officers of the company. They further show that the soldier was killed while on this expedition, having been shot by bushwhackers or guerrillas with whom the immediate country was infested.

In the absence of a record that the soldier was away with leave the Pension Office rejected the claim.

Your committee believe that in this case the petitioner is equitably entitled to the benefits of the provisions of the pension law, for the reason that the death of the soldier is fully proven, and also the fact that his absence from camp was known to his officers and with their implied permission. We therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 3602) granting a pension to Elisa A. Murray.

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JAMES B. WHITE.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1560.]

*The Committee on Invalid Pensions, to whom was referred the petition of James B. White, having had the same under consideration, respectfully present the following report:*

The committee find, from an examination of the papers originally on file in the pension claim at the Pension Office, that the petitioner was a private of Company B, Sixty-second Ohio Volunteers; that he enlisted October 4, 1861, and was discharged October 28, 1862. His declaration for pension was filed August 1, 1876, he alleging that at the battle of Winchester, Va., March 23, 1862, he bruised his leg by a fall on a rock fence while marching up hill, from the effects of which injury his leg has been amputated above the knee. The claim was rejected October 20, 1877, on the ground of "no record of alleged injury; inability to furnish necessary testimony."

Your committee find that there is no record of treatment in the service and no medical evidence of soundness or treatment to date of amputation. Date of amputation of leg, March 29, 1876. The petitioner, in an affidavit to the Pension Office, October 23, 1876, said that he was never treated in any hospital for the disability, but was treated by the surgeon of the regiment, Dr. Hood, who is now dead. He further swears that he cannot furnish medical evidence as to freedom from the injury at enlistment, because of the death of his family physician; nor can he furnish medical evidence as to his condition from date of discharge for the same reason, the death of his family physician. The only evidence he can furnish is that of neighbors, which he asks may be accepted in lieu of medical testimony.

The testimony of neighbors who knew and had employed the petitioner prior to his enlistment is thorough as to the fact of the petitioner's soundness at the time he enlisted in the Army. One of the affiants states that he had had the soldier in his employ for twelve years prior to his enlistment, and that he was thoroughly sound when he went into the Army and had no affection of his legs whatever.

Lieutenant Kohler, of the petitioner's company and regiment, swears that at the battle of Winchester, while the regiment was marching upon the enemy, March 29, 1862, the petitioner, in climbing a stone fence, fell and injured his left knee; that since that time, to affiant's knowledge,

the knee continuously grew worse until amputation was rendered necessary.

Dr. Charles P. Hildreth, who amputated the limb, says that he—

Commenced visiting the petitioner in 1876 and found him suffering a great deal of pain in the left knee; joint opened in two or three points and discharging a large quantity of pus; very much enlarged bones composing the joint carious or necrosed, and the structure of the joint disorganized. An effort was made to save the limb for two or three months. It became evident that he must lose his life or limb, and the limb was amputated March 29, 1876.

He further states that—

The petitioner said to him that he was a cooper by trade and that he had mined coal for two years before he lost his leg, and that the disease in the joint was aggravated by getting cold and wet in the coal bank; that the joint had never been well or sound since he received the original injury at Winchester, Va.

The testimony of comrades is that while marching on quick time at the battle of Winchester the petitioner endeavored to cross a stone fence and fell and injured his knee, the comrades making this sworn statement alleging that they were in the rear rank immediately behind the petitioner and saw him when he fell and hurt himself; that they had a knowledge of the continuous and progressive nature of the disease up to the time his leg was amputated. The certificate of disability upon which the petitioner was discharged the service is signed by Dr. Charles H. Hood, the regimental surgeon, and finds him "incapable of performing the duties of a soldier because of his suffering from varicocele enlargement of the epididymus and testicle, both sides being affected, and is the result of exposure and hard living while serving in the pioneer corps of Shields's division."

This certificate proves conclusively to your committee that this soldier contracted the disease of the knee in the service which led to its amputation, and although he is unable, through the lapse of time, removal &c., to present to the Pension Office the necessary evidence required by the technicalities of the law, we yet believe him to be entitled to the provisions of the pension act, and in that belief report favorably upon his prayer, and recommend the passage of the accompanying bill, entitled "A bill granting a pension to James B. White."

SIDNEY SANDERS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 572.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 572) granting a pension to Sidney Sanders, having had the same under consideration, respectfully report :*

We find from an examination of the papers originally filed in the Pension Office in this claim, that the petitioner was a sergeant of Company K, Fourteenth Ohio Volunteers ; that he enlisted August 25, 1861 ; was discharged March 29, 1862 ; re-enlisted June 9, 1863, as an enrolling officer and special officer and deputy marshal, and was discharged April 20, 1865. His application for pension was filed March 23, 1863, he alleging disability from hernia contracted on the 1st of January, 1862, on march from Lebanon to Columbia, Ky. ; that he was treated in hospital by a citizen surgeon, whose certificate he cannot obtain, as the post-office address is unknown to him. The claim was rejected on the report of a special agent of the Pension Office who investigated it, the ground being that "the disability existed before enlistment."

The evidence in support of the soldier's claim for pension is as follows : The Adjutant-General's report shows him discharged on surgeon's certificate of disability from hospital in Louisville, which states, "This man was admitted to hospital No. 1, Louisville, Ky., February 11, 1862 ; returned to duty February 16, 1862 ; sent to barracks and discharged on surgeon's certificate of disability March 29, 1862, at Spring Hill, Tenn." There is no certificate of disability on file, but the records in the Adjutant-General's office show him to have been discharged as above stated because of hernia, caused by falling down a steep hill which he was descending in the performance of his duty as a soldier on march from Crab Orchard to Lebanon, Ky.

The Surgeon-General's report shows him "treated in hospital No. 1, Louisville, from February 11, 1862, to February 15, 1862, for lame back, and was returned to duty February 16, 1862, and sent to barracks." The further hospital records are not on file, nor is there any certificate of disability on file, the only record thereof being as given in the Adjutant-General's report.

The evidence of the acting hospital steward is to the effect that the petitioner was injured in the spine and with hernia while he was in hospital ; that he assisted the surgeon of the hospital in adjusting a truss and reducing the hernia of the petitioner, and that the said surgeon pronounced the injuries permanent, the affiant having a knowledge of the certificate of disability upon which he was discharged.

The captain of the petitioner's company swears positively as to the contraction of the hernia by falling while descending a steep hill, spraining his back and producing the hernia.

Two comrades, and a lieutenant of the same company, also give positive evidence as to the contraction of the disability as alleged.

The evidence of the family physician of the petitioner, prior to his enlistment, is to the effect that the petitioner was a carpenter and builder, working constantly at his trade, and the physician swears positively that he was not ruptured or injured in the spine before his enlistment; and states further that if he had been so injured the affiant would have known it. The same physician swears that shortly after the petitioner returned from his service he treated him for the injuries, as he alleges.

The petitioner's partner in the business of carpenter and builder swears positively that the petitioner was not injured by rupture prior to his entering the service, and that upon his return from the Army he was disabled in the manner he alleges.

The evidence of comrades and neighbors corroborates all these statements and shows conclusively the fact of petitioner's soundness at enlistment, contraction of the disability in the service, and the existence of the hernia at the time of his discharge.

The Pension Office, not being satisfied with the evidence as filed by the petitioner in his application for pension, subsequently concluded to make a special investigation of his case, which was done by a special agent of the office during October and November, 1876. An examination of the report of the special agent shows that there had been rumors in the neighborhood of petitioner's home that the disability he had alleged having contracted in the service was the result of an injury he received prior to his entering the service.

A mass of testimony was taken, and it appears to your committee that all of the statements obtained by the special agent were based upon hearsay. Altogether nothing was shown as to the contraction and existence of hernia prior to his enlistment, and the only point made in the judgment of your committee, against the case was that the circumstances of the fall received by the petitioner were not so serious as the original affidavits would indicate. The fact was established that the petitioner did receive a severe fall and was injured, and then for the first time was a hernia discernible.

Your committee is of the impression that the bulk of the testimony, and the original record of the Adjutant-General, are entitled to as much or more consideration as that obtained by the special agent, which really presents nothing upon which your committee could report adversely upon this claim. We are impressed with the belief that the petitioner did become disabled in the service, and as such is justly and equitably entitled to his pension, and we therefore report favorably upon his prayer and recommend the passage of the bill (H. R. 572) granting a pension to Sidney Sanders.

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MARY F. HALL.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 127.]

*The Committee on Invalid Pensions, to whom was referred bill H. R. 127, having had the same under consideration, respectfully submit the following report:*

The committee find from the papers originally on file in the pension case that the petitioner is the widow of Theodore C. Hall, who was a private in W. H. Drigg's Company, District of Columbia militia; that he enlisted April 17, 1861, and was discharged July 17, 1861, and died August 13, 1865. His case was rejected March 30, 1875, on the opinion of the medical referee of the Pension Office. There was no invalid application filed in this case. The death-cause was consumption. The widow's application for pension was filed September 7, 1872. The Adjutant-General's record shows the deceased soldier to have been enrolled for three months, and was mustered out without any evidence of disability appearing. There is no report from the Surgeon-General and no testimony from officers. The testimony of comrades is that about the middle of June, 1861, the deceased soldier was taken sick while on guard, and was sick for about three weeks. Other comrades testify to the same statement.

J. S. Adams, M. D., testifies that he was a private in the company, that the soldier contracted cold in the service, and continued unwell until discharged.

Dr. M. V. B. Bogan testifies that he—

Knew the soldier for many years before he died, and that he was a stout, healthy man when he entered the Army in 1861, and entirely free from consumption; that he understood he contracted his disease from which he died from exposure. He contracted a disease of the lungs, which increased until he became affected with consumption, of which he died August 13, 1865; that after the soldier's discharge he would frequently appear almost well for many weeks and then relapse.

This same physician testifies that he was the soldier's physician from 1853 to the date of his death, and that, so far as his memory served him, he soldier up to the time of his enlistment was only treated by him for some little bilious disturbance, but after his discharge his cold increased, and he died from disease which seemed to have the foundation laid by contracting a violent cold in the service; that the soldier's father lived to a ripe old age; and that his mother is still living; and thinks the family clear of any consumptive taint. He first attended the soldier thirty

days after his discharge. He was suffering from malarial poison and lung trouble, which he believed resulted from exposure in the Army, and he attended him continuously up to the time of his death.

The claim was rejected by the medical referee of the Pension Office to the following effect:

I cannot admit this case. It is much more probable that the disease which caused death was contracted from other causes than those to which his three months' service exposed him. I think it very likely that investigation would show that the soldier had very fair health after discharge.

The Pension Office did not seem satisfied to submit the case to an investigation, but rejected it upon the statement of the medical referee as narrated above.

In view of the direct medical testimony presented by a reputable physician of the city of Washington, who had a continuous knowledge of the soldier from his boyhood in 1853 to his decease in 1865, and the testimony of the comrades that he contracted disease while in the service and was sick therefrom, your committee is impressed with the belief that this is a meritorious case, and that the petitioner is entitled to the benefits of the provisions of the pension law; and in view of the additional fact that a favorable report was made upon this claim in the Forty-fourth Congress, we report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 127) granting a pension to Mary F. Hall.

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MARY U. BARTLETT.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4796.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4796) to grant a pension to Mary U. Bartlett, having had the same under consideration, respectfully report:*

We find, from an examination of the papers submitted to your committee and those on file in the Pension Office in this claim, that the petitioner is the widow of Francis Bartlett, who was a private of Company D, Forty-fourth Indiana Volunteers, who died at Maysville, Ind., February 28, 1867. The claim was rejected by the Pension Office on the ground that "the soldier died of disease of the brain and kidneys, which was not the result of the disease which he was afflicted with in the Army, namely, measles." The claim, on rejection by the Pension Office, was appealed to the Secretary of the Interior, who, in his answer thereto, states: "The papers show that the soldier was discharged in 1864 and died in 1867 of disease of the brain, which is alleged to have been the result of measles and typhoid fever contracted while in the service. There is no evidence as to the soldier having contracted measles while in the service and none as to typhoid fever. The medical referee is, however, of the opinion that the soldier's death did not result from measles or any other disease contracted while a soldier. The question appears to be a medical one, and, as it has been decided adversely, I do not feel at liberty to disturb the action of your (Pension) office, and therefore affirm the decision thereof."

The case was therefore appealed to Congress. The petitioner presents the evidence of Dr. E. G. Wheelock, who states that he "was present at the post mortem examination of the deceased soldier, and said examination revealed the following lesions: Waxy degeneration of kidney, effusion of serum sanguinous in ventricles of brain, and it is his opinion that the deceased came to his death from Bright's disease of the kidney, from which he had evidently suffered for a long time."

The evidence in the case of medical men shows that the deceased soldier had been for some years affected with Bright's disease of the kidneys, which the doctors say is the legitimate result of nephritis, which condition resulted from the attack of measles during his service in the Army. They further state that after the deceased had convalesced from measles he had a relapse, and that he was then laboring under Bright's disease of the kidneys, which produced mental derangement.

The evidence of the chaplain of the regiment and of comrades shows the deceased soldier to have been a sound, healthy man at the time of his enlistment; shows the contraction of measles and typhoid fever in the service, from which the deceased had a relapse.

A lieutenant of the soldier's company swears that "the soldier complained to him of kidney troubles during the time of his service." The record shows the contraction of measles, from the effects of which the soldier was discharged.

While, as the Secretary of the Interior states, the question in this case is purely a medical one, the evidence submitted seems to connect the disease with which the soldier was afflicted in the Army with the death cause, and shows that from the time of his discharge up to his death he was continually a sufferer. We are, therefore, impelled to the conclusion that the petitioner is properly entitled to the benefits of the provisions of the pension law, and report favorably upon her prayer, and recommend the passage of the bill (H. R. 4796) to grant a pension to Mary U. Bartlett.

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FRANK LOGSDON.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 584.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 584) granting a pension to Frank Logsdon, having had the same under consideration, beg leave to submit the following report:*

From an examination of the papers in the case on file in the Pension Office and those presented to the committee, we find that the petitioner was a private in Company K, Forty-third Ohio Volunteers; that he enlisted November 1, 1861; was discharged July 13, 1865. He filed a declaration for pension July 1, 1870, alleging disease of the throat, resulting from diphtheria contracted in camp at Millward, Ohio, in December, 1861.

The case was pending in the office for a long time, and in 1876 was submitted to a special agent of the Pension Office for investigation. The inquiry in the case was thorough, and at its close the agent recommended that the pension be allowed; the evidence taken by him showing the following result on the points at issue in the investigation:

First. "Prior soundness," proven by twelve affidavits.

Second. "Contraction of disease in service," proven by eight affidavits.

Third. "Continuance of disability," proven by nine affidavits.

In the face of this accumulation of unimpeached testimony the case was rejected, and the following record made:

In this case there is no record of the alleged disability. The case rests largely upon the testimony of Dr. McMahon, a civil surgeon, who says he "treated claimant for diphtheria at Mount Vernon, Ohio, shortly after enlistment." Dr. McMahon's testimony is shown to be of little value on account of his bad character; it is shown also that claimant's brother and sister had diphtheria at the time of his enlistment and he had the same disease within a short time after. As this is a contagious disease, it is more probable that he caught it from them than that he contracted it in service in line of duty.

The doubt thrown on the testimony filed within the five years renders the claim inadmissible, and it is therefore barred.

Thus the claim was rejected under section 4717, Revised Statutes.

The case seems to have been looked over in 1879, as your committee find therein a memorandum to the effect "that if claimant was in the service one month before the diphtheria showed itself, it was not contracted in his own family prior to enlistment, and does not impair the claim."

This phase of the case should have presented itself to the mind of the officer of the Pension Office who made the very questionable record quoted above. Every point in the case, every iota of evidence presented, impresses your committee with the idea that gross injustice has been done to this petitioner, and that instead of appearing before Congress at this late day in his present attitude he should have been in the enjoyment of his pension years ago. Five examining surgeons of the Pension Office have repeatedly described his disability and fixed his rating.

Your committee report favorably upon his prayer, and recommend the passage of the bill (H. R. 584) granting a pension to Frank Logsdon.

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PATRICK HARDIMAN.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5654.]

*The Committee on Invalid Pensions, to whom were referred the petition and bill (H. R. 5654) granting a pension to Patrick Hardiman, having had the same under consideration, beg leave to submit the following report:*

Upon examination of the papers in the case on file in the Pension Office, we find that the petitioner was a private in Company D, Sixth Regiment Kentucky Volunteers; that he enlisted November 5, 1861; was discharged January 4, 1865, and filed his declaration for pension August 28, 1871, in which he alleges injuries of left side of body and back, fracture of ribs, and other injuries, caused by a blow from a fragment detached from a log by a shot at battle of Shiloh, in a log house, April 6, 1862; affidavit (filed June 1, 1874) that by "other injuries" he meant fracture of skull, left side, producing epilepsy.

The application for pension was rejected by the Pension Office December 3, 1877, as follows: "Claim on account of injuries to skull. &c., barred by section 4717, Revised Statutes; claimant unable to furnish required evidence."

Colonel Whittaker, of the petitioner's regiment, in his testimony, filed August 28, 1871, swears, "that claimant, while in action at Shiloh (April 7, 1862), was injured in the side and back by a splinter knocked from a log by a solid shot; claimant, with a portion of his company, was engaged in holding a log cabin against the enemy at the time; that deponent saw the injury; that he was a good soldier, and sound at enlistment."

W. H. Long, M. D. (testimony filed January 31, 1876), says "the claimant was a sound, healthy man before he enlisted."

J. P. Aldridge, comrade (testimony filed November 7, 1877), says "that claimant was injured, as alleged, at the battle of Shiloh (a cannon-ball having struck the timbers of a log house, he being within the house), by timbers falling upon him, injuring his head."

J. Lowrey, M. D., says "that he made some professional visits to claimant in November, 1869, and probably at other times; that he was afflicted in his head; that he appeared to be in a poor state of health not long since."

D. W. Yandell, M. D., testifies that he "treated him in the fall of 1873 for epilepsy, resulting from depression of the skull, with fracture; affiant considered the case incurable."

P. Scully and C. Ridge, neighbors, testify that he has been "afflicted with epilepsy from the date of his discharge to the present time" (June 1, 1874).

W. O. Roberts, M. D., says, that "he had epilepsy in 1873 and 1874."

George W. Griffith, M. D., examining surgeon of the Pension Office, by direction of the office "to furnish the office with a statement of what you know about the existence of his alleged disability from the date of his discharge to the present time" (September 24, 1874), says, in reply, that his "opinion of the case was given officially in the certificate of the board of examining surgeons; he (the petitioner) was attended by the physicians (for a long time) of the university dispensary of this city (Louisville, Ky.)."

The certificate of the board of examining surgeons, referred to by Dr. Griffith, dated February 8, 1872, gives the following result :

Disability total ; fracture of seventh right rib near anterior extremity ; dis one-half ; has frequent epileptoid attacks ; injury of spine in lumbar region ; there is some atrophy of left buttock and upper part of left thigh ; complains of incontinence of urine, but nothing of the sort is shown on his linen ; walks as if lame in left hip. Hardiman has been under observation for some time, but nothing definite learned. It is thought best, however, to award total (\$8) for the present, and await developments.

After a careful examination of the evidence in the case, and of the action of the Pension Office in its rejection upon a mere technicality, your committee are of the opinion that the petitioner is a proper subject for the benefit of the provisions of the pension laws, and we therefore report favorably upon the prayer, and recommend the passage of the bill (H. R. 5654) granting a pension to Patrick Hardiman.



• BRITANNIA W. KENNON.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5655.]

*The Committee on Invalid Pensions, to whom was referred the petition of Britannia W. Kennon, having had the same under consideration, respectfully report :*

The committee find from the petition and from the papers on file in the pension claim at the Pension Office that the petitioner is the widow of Commodore Beverly W. Kennon, of the United States Navy, who died in consequence of the bursting of a cannon, February 18, 1844, while in attendance on the President of the United States, on board the ill-fated vessel, the Princeton; that she was pensioned February 19, 1849, at the rate of \$50 per month, which pension she continued to draw up to about eight years ago, when her pension was reduced to \$30 per month by the Pension Office, in order that it should conform to existing law. The Pension Office claims that it has no power to increase the pension beyond the rate to which it was reduced, and that special legislation is required by Congress. To accomplish this the petitioner appears before your committee.

Your committee find that the deceased officer met his death while in the performance of his duty and in obedience to orders from the President of the United States; that the pension first granted was granted in good faith to, in a measure, compensate the widow for the loss of her husband. We do not believe that it was the intention of the framers of the law under which the pension was reduced to affect such worthy recipients as the petitioner; and holding that belief, your committee feel that she should be restored to her original rating on the pension rolls. We therefore report favorably upon her prayer, and recommend the passage of the accompanying bill (H. R. 5655), granting an increase of pension to Mrs. Beverly W. Kennon.

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DANIEL MEENAN.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5656.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5656) granting a pension to Daniel Meenan, having had the same under consideration, respectfully present the following report:*

The committee find from an examination of the papers in the original pension claim at the Pension Office, that the petitioner was a private in Company G, Ninety-third Pennsylvania Volunteers; that he enlisted October 15, 1861, and was discharged January 23, 1863; that his claim for invalid pension was filed April 4, 1872, and that it was rejected April 16, 1877, under section 4717 Revised Statutes, the War Department being unable from the evidence presented to make a record in the case.

The allegation of the petitioner in his application for pension was that, at the battle of Fair Oaks, about May 31, 1862, he, while on retreat, fell and an officer's horse trod upon his left foot and left side, injuring them. These allegations are reiterated in a new application filed May 15, 1875.

The evidence of Lieut. W. A. Ruddoch, of the petitioner's company, recites the fact of the injury, giving the same statement of the occurrence as does the petitioner in the allegation.

Two comrades, whose presence is verified by the Adjutant-General, swear that at enlistment and up to May, 1862, the petitioner was a sound healthy man, free from any ailment and prompt in the performance of his duties as a soldier; that they saw him knocked down and disabled on the battle-field at Fair Oaks, and that the fact of his being injured was detailed among the men of his company at the time. The Adjutant-General reports him on the company rolls for May and June, 1862, "Present," with the remark "Sick at hospital." Subsequently he is reported "Sick at hospital in Georgetown." He was discharged January 23, 1863, at Camp Convalescent, Virginia, on surgeon's certificate of disability, "because of chronic rheumatism, old age, and general debility." The discharge was made by a board of surgeons, convened by special orders War Department, and your committee can readily understand how, in the hurry of a visit of inspection, a disability such as the certificate shows could be given to a man suffering from injuries such as the petitioner shows by evidence he was in hospital from.

Your committee believe this to be a deserving case, and that this petitioner is entitled to the benefits of the provisions of the pension laws. We therefore report favorably upon his prayer and recommend the passage of bill H. R. 5266, granting a pension to Daniel Meenan.



AUGUSTUS LAMPPPI.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5657.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2491) granting an increase of pension to Augustus Lamppi, having had the same under consideration, respectfully present the following report:*

The committee find from the papers on file in the pension claim of the petitioner that he has served the United States as a soldier for a period of time covering fifteen years and eight months, his first enlistment being in May, 1833. He was in the Army during the Florida and Mexican wars, then in the ordnance service, and enlisted November 21, 1862, in the Seventy-fourth Pennsylvania Volunteers, transferred to Veteran Reserve Corps, and finally discharged January 7, 1865, on surgeon's certificate of disability because of "incontinence of urine, old age, and general debility, with emaciation, developed since enlistment; disability for military service, total; for civil occupation, three-fourths."

The petitioner was originally pensioned at \$4 per month for an injury to the thumb of his left hand, which was contracted in the war with Mexico. Having re-enlisted, this pension was discontinued until his return from the service, when, on application, the pension was renewed at \$6 per month. He then applied for increase of pension by reason of disabilities contracted in the service during the war of the rebellion, alleging rheumatism, incontinence of urine, and amaurosis. The evidence of officers showing the contraction of these disabilities in the service is positive, and medical examinations showing such to exist, he was pensioned at \$15 per month, which was subsequently increased to \$18. Various medical examinations subsequent to January 21, 1870, show a disappearance of some of his disabilities, and he was gradually reduced until he is now receiving a pension of but \$2. The Pension Office seems in this case to have applied its "iron rule" to its utmost limit, and because the apparent disability, which should be rated, cannot by the board of examining surgeons be "traced to the service," he is debarred from receiving any other pension than for the injury to his thumb, which is positive. The surgeons say that he has "enlargement of the prostate gland and incontinence of urine," which they think "is probably due to his age"; he is now seventy-six years old.

The evidence shows that his condition is due to disease contracted in

the service, and your committee recommend the passage of the accompanying substitute for bill H. R. 2491, which it has worded so as to apply directly to this case, inasmuch as recent evidence filed with your committee shows that the pensioner's disabilities do exist at present in an aggravated degree.

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ANTHONY PETERSON.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4336.]

*The Committee on Invalid Pensions, to whom was referred the petition of Anthony Peterson, with the accompanying bill (H. R. 4336), granting a pension to Anthony Peterson, having had the same under consideration, respectfully report:*

We find from an examination of the papers on file in the original pension case at the Pension Office that the petitioner was a private of Company F, Forty-fifth Ohio Volunteers; that he enlisted August 5, 1862, and was discharged January 12, 1865; filed his application for pension November 24, 1875, alleging that he is disabled from manual labor by reason of the results of measles contracted March, 1865, which assumed the form of an affection of his left side; also that he was ruptured while in Andersonville prison. He claims in his application to be unable to furnish the testimony of the assistant regimental surgeon who treated him; that he is now dead, and that the only comrade who knew of his contracting the disability in prison is also dead.

The record evidence in the case shows him to have been reported missing in action at Philadelphia, Tenn., October 20, 1863, at which place his company was in action at that date. He was reported prisoner of war to December 24, 1864; afterwards reported sick at London, Ohio; afterwards sick at Annapolis, Md. The muster-out roll reports him absent, sick, at Lexington, Ky. His discharge certificate, dated June 12, 1865, was sent to him through an attorney at Columbus, Ohio, November 5, 1866. The prisoner-of-war records show him captured at Philadelphia, Tenn., October 20, 1863; confined at Richmond, Va., November 1, 1863, and sent to Andersonville, Ga., February 8, 1864; was paroled at Charleston, S. C., December 6, 1864; reported at Camp Parole, Md., and sent to Camp Chase, Ohio, December, 1864. The records show no disability.

A physician of London, Ohio, testifies as to the fact of his being a perfectly sound and healthy man at enlistment; that while he was at home on sick furlough, after having been in prison, he was suffering in the manner he now alleges.

Two comrades show the fact that the soldier was sick with measles in hospital, and that his disease resulted in pleuro-pneumonia of left lung. They also testify as to his capture.

The report of the examining surgeon of the Pension Office, made Sep-

tember 18, 1876, finds the soldier suffering with two disabilities; one chronic pleurisy of left chest, the other inguinal hernia, and rates him at \$6 a month. The case was rejected by the Pension Office on the ground that "there is no record of the disability alleged, and claimant is unable to furnish officer's certificate as to origin, or regimental surgeon's as to treatment in service." The petitioner, in his sworn testimony, states the cause of his inability to furnish the evidence required by the Pension Office, and as his statements as to his disability are borne out by the records and by the medical testimony and that of comrades, your committee is of opinion that because he is unable to comply with the technicalities of the pension laws he should not be deprived of the benefits thereof. We therefore report favorably upon his petition and recommend the passage of the bill (H. R. 4336) granting a pension to Anthony Peterson.

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FRANCIS REICHERT.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5658.]

*The Committee on Invalid Pensions, to whom were referred the petition of Francis Reichert and the bill (H. R. 5658) granting a pension to Francis Reichert, having had the same under consideration, beg leave to submit the following report:*

Upon an examination of the papers in the case in the Pension Office we find that the petitioner was a private in Company K, Fourteenth Illinois Cavalry; enlisted May 14, 1861; finally discharged April 14, 1864; first application for pension filed September 16, 1864, the last one, December 24, 1874; the claim was rejected April 4, 1877, as follows:

“Rejected on the facts now shown, disability found by board of surgeons, not alleged; similar condition in both legs no doubt due to a common origin, as wound or injury of left leg (if received) is an insufficient cause for varix in both legs; disability is referred to an origin independent of injuries alleged.”

The claimant in his declaration for pension alleged that he received a gunshot wound in the left ankle at Buffington's Island, Ohio, July 19, 1863. In a second declaration he alleged that the injury to his left ankle at Buffington's Island was caused by his horse falling on him. In an affidavit, July 25, 1876, he endeavors to explain the discrepancy by stating that he was wounded by a gunshot in his left ankle at Wilson's Creek, Missouri, August 10, 1861, and that his attorney is responsible for confounding his statements. In his petition to Congress he states that he was wounded at Wilson's Creek, August 10, 1861, by gunshot, and at Buffington's Island, July 19, 1863, in his right leg by his horse falling upon him.

The injury at Wilson's Creek and at Buffington's Island is personally sworn to by two comrades at each place, whose presence is verified by the Adjutant-General. The affidavits of three citizens of Louisville, Ky., are given, showing the treatment of the petitioner by a physician, now dead, for sore legs, which treatment occurred immediately after the petitioner's discharge from the Army. The evidence of hospital treatment at Cincinnati and Dayton, Ohio, from 1873 to 1876, is shown by the evidence of the proper officers. The Adjutant-General's rolls show no further evidence of medical treatment in the service for any disability save the remark “sick in hospital at Madison, Ind., since August 14, 1863.” The morning report books of his company furnish no evidence of disability. The hospital treatment is shown as follows:

"Admitted to branch 12 of No. 1 Hospital at Louisville, Ky., August 26, 1863, for treatment for old gunshot wounds reopened." "Entered G. H., Madison, Ind., September 26, 1863, with shell wound of left leg."

The petitioner was discharged the service on account of wound of the left leg, which is still discharging. The first examination made of the applicant by an examining surgeon of the Pension Office was at Louisville, Ky., September 10, 1864, and showed the fact of the gunshot wound in which erysipelas had developed, causing large and obstinate ulcers. Four succeeding examinations, in the years intervening between this date and the time of the rejection of the claim, show the same ulcerous condition of the leg, until the last examination by the board of examining surgeons at Dayton, Ohio, in 1877, discovered a similar condition of the right leg, which was reported to the Pension Office, and, as stated in the beginning of this report, furnished the basis for the rejection of the claim.

Your committee are of the opinion that the Pension Office in this case has applied its "iron rule" to a greater degree than the facts warrant, and believe that this soldier should be admitted to the pension-rolls for the disability he alleges. We therefore report favorably upon his prayer, and recommend the passage of the bill (H. R. 5658) granting a pension to Francis Reichert.

ELIZABETH PERCEY.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5659.]

*The Committee on Invalid Pensions, to whom was referred the petition of Elizabeth Percy, having had the same under consideration, respectfully submit the following report:*

We find from an examination of the petition referred to your committee, and the papers on file in the original pension claim at the Pension Office, that the petitioner is the widow of John Percy, who was a private of Company H, Thirty-fifth Indiana Volunteers; that he enlisted October 1, 1861, and died by drowning May 5, 1862. The widow's application for pension was filed November 30, 1874, and was rejected February 16, 1876, on the ground that "the soldier's death was not incidental to his military service and did not occur in line of duty."

The Adjutant-General's report in the case shows that on muster roll of company for March and April, 1862, he is reported present. July and August, 1862, he is reported drowned. Deserted at Nashville, Tenn., April 4, 1862. Muster-out roll of company, dated September 30, 1865, reports him in hospital 1862. The charge of desertion is removed.

The soldier received a pass April 4, 1862, of twenty-four hours to go into Nashville, Tenn., and while absent on said pass the regiment was ordered away. He was drowned while in swimming on or about May 5, 1862, while at convalescent camp on the Cumberland River, some 80 or 100 miles from Nashville, Tenn. The Adjutant-General further reports, May 5, 1875:

From evidence received at this office it appears that the soldier, while in convalescent camp on the Cumberland River, on or about May 5, 1862, went in swimming with some of the men, got into a hole, and was drowned. His body was recovered the next day.

Lieutenant Walsh, of the deceased soldier's company, states that—

On the 4th of April the soldier received a pass to go into Nashville on business for some members of the company, mainly to express some clothing home. He did not come back soon enough, as the regiment was suddenly ordered away, leaving the deceased soldier. News afterwards came to affiant as to the following facts, and the same were published to the command. Percy went into town, was taken sick, and did not get back to the regiment. Was taken by provost-marshal and found to be all right. He did not know where his regiment was and was sent to convalescent camp near Nashville, Tenn., and was, while bathing under a sanitary order, accidentally drowned on the 5th of May, 1862, in the Cumberland River.

Ezekiel Burney, private of Company F, First Ohio Volunteers, swears that he—

Was sick in the convalescent camp near Nashville, Tenn., and that on or about April 10—not later than the 15th—in the year 1862, one John Percy, well known to affiant, both being from Dayton, Ohio, came to the said camp at Nashville as convalescent, and on the 5th of May, while he was bathing, under orders from headquarters to bathe, was accidentally drowned. Affiant helped to raise his body and bury it. He was well known to affiant as a member of Company H, Thirty-fifth Indiana Volunteers.

Your committee, taking the statement which was received at the time and published to the deceased soldier's command, that he was drowned while bathing under a sanitary order, and taking into consideration the sworn testimony of a soldier of another company and regiment, who happened to be at the convalescent camp and was acquainted with the circumstances, that he, in company with the deceased soldier, was bathing under an order from headquarters to bathe as a sanitary precaution, are of the opinion that the arbitrary ruling of the Pension Office is unjust to the memory of the soldier and to the rights of the petitioner, his widow.

In view of the facts recited, and of the record of the Adjutant-General, corroborating the statements of the soldier who testifies as to the death, your committee believe that this widow is justly entitled to her pension, and therefore report favorably upon her prayer and recommend the passage of the accompanying bill, entitled "A bill granting a pension to Elizabeth Percy."

HENRY MCFADDEN.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5660.]

*The Committee on Invalid Pensions, to whom were referred the petition of Henry McFadden and bill (H. R. 745) granting a pension to Henry McFadden, having had the same under consideration, beg leave to submit the following report:*

Upon an examination of the papers in the case on file in the Pension Office, we find that the petitioner was a private in Company B, One hundred and fifty-fourth Ohio National Guard Volunteers; that he enlisted May 2, 1864, and was discharged September 1, 1864; and that he filed his declaration for pension March 8, 1877, alleging—

Disease of eyes contracted from exposure on retreat from Greenland Gap, W. Va., about July 4, 1864. One eye became blind and the other is very weak; cannot see much out of it. Was not in hospital, and received no treatment by the regimental surgeon.

The application was rejected by the Pension Office July 13, 1877, as follows: "No record, and inability to furnish medical evidence connecting alleged disability with the service." And August 25, 1877, the Pension Office decided, after additional evidence had been presented \* \* \* "he received no treatment from the regimental surgeon, and the testimony filed is not accepted as sufficient to reopen the claim."

Capt. A. C. Miller, commanding the petitioner's company, swears:

At Greenland Gap, W. Va., claimant complained to me of weakness of eyes, brought on by fatigue and exposure in the service. He had a severe cold about July 4, 1864, which seemed to settle in his eyes, caused by having to lie out at night, while on a scout, without covering. Claimant complained to me up to the time of his discharge. His eyes did not get better while in the service. His eyes appeared to be sound at enlistment. He was a good soldier. (Filed July 5, 1877.)

Claimant states the surgeon who first treated him after he came out of the service is dead. The Adjutant-General's Office reports: "Rolls and return fail to show disability."

Dr. George Watt, late surgeon One hundred and fifty-fourth Regiment Ohio National Guard (the claimant's regiment), in an affidavit made August 17, 1877, says:

I was surgeon of said regiment; and that previous to his enlistment, during his service, and ever since, I was, and have been, well acquainted with Henry McFadden, of Company B, of said regiment; that said Henry McFadden's eyes became weak while he was in said service; that he called my attention to them, and that my recollection is that I suggested palliative treatment, as his term of enlistment was drawing

to a close, and I supposed the trouble to have resulted from fatigue and exposure, and that he would recover by rest; that he had not complained of his eyes till shortly before the end of his service; that his eyes appeared to be sound at the time of his enlistment.

Leigh McClung, M. D., June 26, 1877, certifies:

I have known Henry McFadden for the last sixteen years. That I saw him occasionally professionally and met him almost daily previous to and up to the date of his enlistment in the One hundred and fifty-fourth Regiment Ohio National Guard in May, 1864, and that I have no recollection of having prescribed for any eye trouble, nor was I aware of his having any disease of the eyes previous to his enlistment in the service.

There is also filed with your committee a petition signed by a number of the most prominent men of Xenia, Ohio, testifying to their knowledge of the facts set forth in the petitioner's declaration, and to his good character as a citizen.

In view of all the facts in the case, we are led to the conclusion that the petitioner should be placed upon the pension-rolls, and we therefore recommend the passage of the accompanying substitute for the bill granting a pension to Henry McFadden.

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H. C. WILLIAMS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill H. R. 5661.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4727) granting a pension to Henry C. Williams, have considered the same, and report:*

From an examination of the petition and papers accompanying said bill, it appears that said Williams became a member of the One hundred and thirty-seventh Regiment Illinois Volunteers, "one hundred days' men," on the fourth day of May, 1864, and while in said service and in line of his duty he was, on the 21st day of August, 1864, captured by the Confederate forces under General Forrest, near Memphis, Tenn. He states in his petition that he was compelled to march sixty-five miles the first sixteen hours after his capture, the said Confederates being on the retreat, and he barefoot and thinly clad. He states that he was kept in prison in Alabama for several months until exchanged, and upon his return home found that his lungs were greatly affected; that he was treated therefor by a physician, whose whereabouts he does not now know, and by his family physician, who is dead; that he improved under their treatment and moved to the State of Kansas, but in a short time the disease became more developed, and he is now in the last stages of consumption, with no hope of recovery.

J. B. Johnson, an officer in said command, testifies to the soundness of petitioner before service, which fact is also established by the affidavits of petitioner's two brothers. Said officer also confirms the statement as to the capture of Williams by the enemy.

Drs. P. D. Burdick and John McClintock state that they are well acquainted with petitioner, and have carefully examined him, and that his case is hopeless; that he has consumption, and that it is of many years' standing. His two brothers testify to the same fact, and that his disease was occasioned by his military service.

The report of the adjutant-general of the State of Illinois shows that claimant was a member of said regiment, that he was a prisoner of war, and honorably discharged from said service.

The committee are of the opinion that the petitioner is entitled to the relief sought, and recommend the passage of the substitute herewith reported.





DELIAH COLLY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 645.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 645) granting a pension to Deliah Colly, have had the same under consideration, and submit the following report :*

It appears that the said Deliah Colly is the widow of Harman Colly, who was late a private in Company D, Sixth Regiment Kentucky Cavalry, who was, as she alleges, killed while in said service and in line of his duty.

To substantiate her claim she produces an affidavit of Rulin Munday, who was colonel of said regiment, who swears that the said Colly was killed in battle while engaged with the enemy, and that he was never a deserter from said command.

Alfred Little states in his affidavit that he was orderly sergeant of said company, and that to his personal knowledge said Colly was killed in battle with the enemy and while in the line of his duty. Alfred A. Gambill and Edward Marcum make the same statement.

The claim was rejected because the report of the War Department shows that the said Colly was, at the time of his death, absent without leave; and further, that he was killed in a private brawl. It also says that he was killed by the enemy while absent without leave.

The committee are of opinion the evidence preponderates in favor of his claim; that the said Deliah Colly has shown right to pension, and they recommend that the bill do pass.



MOHAMMED KAHN.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5662.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2915) for the relief of Mahomed Kahn, otherwise John Ammahoe, have considered the same, and report:*

Mohammed Kahn was enlisted in the United States service as a private in Company E, Forty-third New York Volunteers, August 2, 1861, and was discharged said service June 27, 1865. He is borne on the rolls of said regiment as John Ammahoe. He is a native of Afghanistan, India, and alleges that, being unable to speak English when he enlisted, he was enrolled as a Blackfoot Indian, the enrolling officer "guessing" that he belonged to that tribe.

He alleges that while in the service and line of duty he was struck in the face with the butt of a musket in the hand of one of the enemy at the battle of Malvern Hill, in the Peninsula campaign; that he received a pistol-ball wound at the battle of Spottsylvania, Va. He is also, as he insists, afflicted with rheumatism contracted in the service.

His term of service embraces nearly four years; and for six months, 1862-'63, he is borne on the rolls as a deserter, which he bitterly and indignantly denies, but accounts for his absence by saying that while on detached duty at Frederick City, Md., he was arrested as a contraband, though protesting at the time as well as he could in broken English that he was a member of the Forty-third New York Volunteers, and was, with a squad of contrabands, sent to Harrisburg, Pa.; that he had no means of returning to his command, and when he asked for transportation it was refused because his story was not believed. He hired out as a servant to a captain of a Connecticut battery, who took him to Petersburg, Va., where he finally rejoined his regiment and remained with it till the close of the war.

John J. Shipman and Francis Bengolen say that they became acquainted with the claimant about eighteen months after his enlistment, and that at that time he was sound and free from disease.

Thomas W. Withcomb states that he was connected with the Army and knew the claimant, and that the claimant contracted rheumatism of the neck and shoulder during the spring of 1865. Of this, he says, he has personal knowledge.

Joseph W. McGraw, late a member of claimant's company, testifies that claimant contracted rheumatism while in the service, affecting

his body and joints generally, by reason of hardship and exposure in the Army; that he was first attacked at Sailor's Creek, Virginia, in April, 1865.

William T. Morris and W. H. Washington testify that in the spring of 1866 claimant was confined to his bed with chronic rheumatism, and that he suffered with it continuously during 1866 and 1877.

Dr. Webster Prentiss testifies that claimant was under his treatment for chronic rheumatism in July and August, 1869.

Dr. William B. Mackin, of Boston, Mass., states that he treated claimant for chronic rheumatism in 1869 and 1870.

Dr. Stephen Jones states that he treated claimant for chronic rheumatism and affection of the head during the years of 1872 and 1873.

Levi Tower, druggist, of Boston, Mass., states that claimant bought medicine of him for two years, beginning in 1869, and he regarded him as a very sick man with chronic rheumatism and scalp disease.

Ashel Boyden, pharmacist, Boston, states that he furnished claimant medicine for rheumatism in 1870.

Neither the office of the Adjutant-General nor Surgeon-General contains any record of treatment of claimant for disease or wound.

Examining-Surgeon Stanton certifies that claimant is laboring under no disability resulting from injury to face or gunshot wound of left hand. He says nothing as to rheumatism; certificate dated June 5, 1875.

Examining-Surgeons William Grinstead, J. B. G. Braxton, and N. F. Craton, under date of July 18, 1874, state that claimant is one-eighth disabled by reason of wound in hand, one-eighth disabled by reason of injury to face, and one-half disabled by reason of rheumatism, the three physicians acting as a board of examining-surgeons.

Four examining-surgeons made a diagnosis of his case May 14, 1875, and reported that he is totally disabled by reason of injury to face, hand, and rheumatism.

The claim was rejected by the Pension Office because there was no record evidence of the injuries and disability alleged, and because the testimony of no commissioned officer of the command was adduced to prove the claim.

The committee are of opinion that the relief sought should be granted, and recommend the passage of the accompanying substitute for the bill.

GEORGE C. TRACY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3793.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3793) granting a pension to George C. Tracy, have had the same under consideration, and submit the following report:*

It appears from the evidence that the said George C. Tracy was a private enrolled in Fifth Maine Battery, light artillery, on 8th September, 1864, and honorably discharged therefrom July 6, 1865. He filed his declaration for pension in the Pension Office July 17, 1879, which was rejected because there was no record of the alleged disability and no evidence of the surgeon of command furnished.

Tracy alleges that while in the service and in line of his duty, at Frederick, Md., in April, 1865, he, by exposure and fatigue, contracted asthma and chronic diarrhoea, which diseases have been continuous and disability resulting therefrom permanent. He asserts that he is unable to furnish the testimony of a commissioned officer of his command because of his ignorance of their whereabouts. He presents the affidavits of David, Thomas, and Walter Tidd, who affirm that he was a sound man physically at the time of his enlistment. Doctor Walker makes the same statement.

John Kingdom and William G. Sharp say they were comrades of Tracy in the service, and in their affidavits state that he contracted said disease at the time, in the manner, and at the place he states.

Tracy filed an affidavit in which he states that he is unable to furnish the testimony of the physician who first treated him after his discharge on account of the death of said physician.

Dr. Gustavus F. Walker states that he has treated Tracy for asthma and chronic diarrhoea since September, 1873; that he is sorely afflicted with said diseases, and at times is prevented from performing labor for weeks, and that he requires medical attention at all times.

From the evidence the committee think the said Tracy has shown equitable right to pension, and we recommend the passage of the bill.



HEIRS OF KUNIGUNDA A. MILLER.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5663.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3623) for the relief of the heirs of Kunigunda A. Miller, deceased, have had the same under consideration, and report:*

It appears that the said Kunigunda A. Miller was the mother of Leonard Albert, who died while in the military service of the United States as a private in Company F, Twenty-sixth Regiment Indiana Volunteers. It appears that after the death of her said son Mrs. Miller applied to the Pension Office for pension, which was granted, and pension certificate No. 129461 forwarded to her; her pension to date from 15th January, 1869.

Kunigunda A. Miller afterward applied for the arrears of pension due her as "mother" aforesaid under acts of Congress of January 25 and March 4, 1879, which was also granted her, and certificate forwarded to her (No. 129461), but, by mistake in the Pension Office, she is designated widow, instead of mother, and the same was not paid on that account by the pension agent at Louisville. Before the mistake could be corrected in the Pension Office Mrs. Miller died, and the claim of her heirs for said arrears was rejected. Said arrears was at the rate of \$8 per month from August 30, 1863, till January 14, 1869.

It is fully shown that John Albert, Mary Carr (formerly Mary Albert), Michael Albert, and Carrie Miller are the children and heirs at law of said Kunigunda A. Miller, and brothers and sisters of said soldier.

The committee think that the said heirs are entitled to the arrears due their mother, and recommend the passage of the accompanying substitute for bill H. R. 3623.





SARAH LANDERS AND ANNIE PODESTER.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT :

[To accompany bill H. R. 5664.]

*The Committee on Invalid Pensions, to whom was referred the petition of Sarah Landers and Annie Podester for pension, have considered the same and report:*

It appears from the petition and the papers on file in this case that Alfred H. Wyatt was a private in Company B, Fifth Iowa Volunteer Cavalry, in the war of the rebellion, and that while in said service the said Wyatt died in United States hospital at Davenport, Iowa, April 17, 1864.

The claimants allege in their declaration that they are the only sisters and heirs-at-law of the said Wyatt, his parents both being dead, and that he had never been married.

It appears that Annie Podester (formerly Wyatt) was born July 26, 1850, and Sarah Landers (formerly Wyatt) was born December 9, 1853.

It is fully shown that the claimants are the sisters of said soldier by the affidavits of Arabella and Elizabeth Jameson, who also prove that the said Wyatt, Annie Podester, and Sarah Landers are the children born in lawful wedlock of Vincent Wyatt and Lucy Jameson.

The claim of the petitioners was rejected by the Pension Office, because the claim was not filed within five years after the youngest claimant arrived at the age of sixteen years.

The committee think the claimants are entitled to the relief sought, and recommend the passage of the accompanying bill.



GEORGE ANDREWS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2753.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2753) granting a pension to George Andrews, have had the same under consideration, and submit the following report:*

It appears from the testimony in this case that the said Andrews was enlisted September 30, 1862, as a private in the Sixth Maine Battery, and discharged from said service April 3, 1863, and that he filed his application for pension in the Interior Department a few weeks after his discharge, alleging that while in the service and in line of duty on a march from Bolivar Heights to Dumfries, Va., in December, 1862, his horse fell with him, and greatly hurt and injured his right hip and leg, and that when his comrades took hold of him to extricate him from his position under the horse they lamed his back by pulling him. He also alleges that while with his battery at Dumfries, Va., he contracted chronic diarrhea, and also a severe cold, which settled in his limbs and resulted in rheumatism; that he has a constant pain across his bowels; is very weak and emaciated.

Angus Makay, J. S. Prauty, E. P. Wood, and Page Mix all testify to the fact that the claimant was a sound, healthy, "rugged" man when enlisted.

Lieut. Edward Wiggins, of the Sixth Maine Battery, says that on the march of the battery from Bolivar to Dumfries the horse of claimant fell and greatly injured claimant's right hip and leg, and otherwise laming him, and he also testifies to claimant having chronic diarrhea and a severe cold occasioned by sleeping on wet ground at Dumfries.

Lyman Gilpatrick, a comrade of claimant, confirms the statement of Lieutenant Wiggins. David M. Wiley, another comrade in the service, makes the same statement.

Surgeons E. N. Mayo and Benjamin Bussey state that Andrews is unable to perform a soldier's duty by reason of injuries received in the Army. This statement is dated May 6, 1863, a few days after the date of discharge. Dr. Bussey also says he treated claimant after discharge in 1863 for injury to right hip and back, and also for diarrhea, and says that at that time it was quite apparent that he could not recover. He states that he treated him for several years after discharge, but to no

purpose. He also states that his disability was caused by accident, hardships, and exposure in the service.

Dr. E. P. Snow states that he had treated the claimant for injuries to hip, leg, and back, and that for three years prior to the date of his affidavits—May, 1873—he had been unable to perform manual labor. He states that the injury is permanent.

Angus Makay, J. S. Prauty, E. P. Wood, and Page Mix, in their affidavits, filed November, 1875, state that since his discharge Andrews has not been the robust man he was before. They further state that he lost his health in the service, and declare that he was at no time afflicted with syphilis before or since his service.

J. H. Ransdell, David Pierce, S. S. Pierce, and Moses Morrison state that the claimant is a man of excellent morals, sober, and, so far as his physical health permits, industrious.

The wife of claimant indignantly denies that he has ever been afflicted with syphilis, and points to the fact that she has borne him four unusually healthy children, and states that her husband has been infamously slandered.

Examining Surgeons Buck, Sprague, Thompson, and Hamlin all state that they have examined claimant, and find him laboring under disability resulting from chronic diarrhea and injury to back and hip.

The Commissioner of Pensions rejected the claim because it was barred by section 4717, Revised Statutes, requiring claim for pension to be prosecuted to successful issue within five years after filing same, and because the certificate of disability under which claimant was discharged stated that he had syphilis before his enrollment.

The committee think that the weight of evidence is overwhelmingly in favor of the claim, and recommend that the bill do pass.

LOUIS K. WHITMORE.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2842.]

*The Committee on Invalid Pensions, to whom was referred the petition, accompanied by the bill (H. R. 2842), for the relief of Louis K. Whitmore, having had the same under consideration, respectfully report:*

We find from an examination of the papers presented to your committee, as well as those filed in the original claim at the Pension Office, that the petitioner, Louis K. Whitmore, was a locomotive engineer, in the United States military railroad service; that he was discharged from such service May 10, 1865, and that he filed an application for pension or disabilities received in such service August 14, 1868.

His application for pension was rejected by the Pension Office on the ground that no provision was made by the law whereby cases such as his could be admitted to the pension rolls. He therefore appeals to Congress.

The petitioner had served the government in the capacity of a locomotive engineer for about fifteen months, when on August 9, 1864, while on the Manassas Gap Railroad, one mile south of White Plains, Va., and while running his engine in the line of his duty, carrying government supplies, the train was attacked by guerrillas, thrown down the embankment, the guerrillas at the same time firing into the train. The petitioner was wounded in his right arm by a bullet and his left thigh broken and greatly strained. He is now partially incapacitated from earning his livelihood; his sufferings have been continuous, and of such a character as to render him in a crippled condition, the left leg being shorter than the other.

The statement of the petitioner is corroborated by that of Dr. Lansing Griffin, who was in charge of a hospital known as the United States Marine Hospital, located at Alexandria, Va., during 1864. This physician gives a very full statement as to his examination of the petitioner at the time, describes the injuries he had received, and gives a history of his case, showing that he was attacked with pneumonia in hospital, and that at the end of six weeks there was non-union of the fractured thigh, and the vital powers were much depressed. He was discharged from hospital February 22, 1865. The doctor testifies to a knowledge of the petitioner from the time of his injury to the present, and certifies that his arm is now very much weakened by the loss of muscle and tissue. His left leg is smaller than the right one, and he is unable to bear the fatigue necessary to follow his occupation.

In view of the facts in the case, corroborated as they are by full and complete testimony, your committee is of the opinion that this is a case in which the interposition of Congress is warranted and should occur. We therefore recommend that the prayer of the petitioner be granted, and report favorably upon the bill (H. R. 2842) for the relief of Louis K. Whitmore.

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ROSALIE LOUIS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4887.]

*The Committee on Invalid Pensions, to whom were referred the bill (H. R. 4887) granting a pension to Rosalie Louis, and the petition accompanying it, having had the same under consideration, respectfully report:*

The committee find that the petitioner is the widow of Peter Louis, who was late a private in Company B, First United States Sharpshooters, who was a pensioner at \$18 per month for gunshot wound of the right thigh, which had the effect of crippling him to such an extent that he was obliged to use crutches for the purpose of locomotion; and that the pensioner, with several other men, on or about April 21, 1876, was in a wagon at a point on Hudson River known as Breakneck Point, at Phillipstown, Putnam County, N. Y.; that the horse became frightened and backed the wagon into the river, the other occupants saving themselves, but the deceased soldier, being so incapacitated by his wounds as to be unable of self-protection, was drowned.

The committee have had placed before them the evidence of the coroner's jury held in the case, which jury gave a verdict to this effect:

That Peter Louis came to his death by being backed into the Hudson River at Breakneck Point by his horse; that he being disabled by a gunshot wound which he had received while in the United States service, which rendered him unable to help himself, and the verdict of the said jury was that the said Peter Louis came to his death from that cause and not otherwise.

The petitioner is of the age of sixty years, and destitute.

Your committee, having considered the facts set forth, and the equities of the case, are constrained to believe that the death cause in this case was due altogether to the fact that the deceased was so incapacitated as to be incapable of self-protection. We therefore believe that the petitioner is a proper person to be entitled to the provisions of the pension law, and report favorably upon her prayer, and recommend the passage of the bill (H. R. 4887) granting a pension to Rosalie Louis, as amended by the committee, as follows: Add at the end of said bill the following: "Said pension to commence from the date of the death of the soldier, April 21, 1876, and to be for the same sum per month as was received by the deceased soldier at the time of his death."





MARY C. MURRAY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5665.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5665) "granting a pension to Mary C. Murray," accompanied by her petition, having had the same under consideration, respectfully submit the following report:*

The committee find from an examination of the papers on file in the Pension Office in this claim that the petitioner is the widow of the late Col. Edward Murray, brevet brigadier-general, United States Volunteers, late lieutenant-colonel, Fifth New York Heavy Artillery; that he entered the service with the rank of lieutenant-colonel during March 1862, and served therein until the war had closed. He was pensioned for a gunshot wound of the right wrist, and died November 13, 1876, in New York City.

The widow's application for pension was filed January 5, 1877, alleging that the deceased died from the effects of wounds received in the service. The application was rejected by the office on the ground that the cause of death of the soldier was not incident to the service.

The history of the case as shown to your committee by the evidence on file is as follows:

Colonel Murray, while in command of his regiment at Snicker's Gap, Virginia, July 18, 1864, received a gunshot wound of the right wrist. It bled profusely and to such an extent that he fainted from the loss of blood, and was being carried off the field by some of his men, when he received a gunshot wound in the back and over the region of the kidneys. He was taken prisoner before being got safely to the rear, was carried to Richmond, and was in prison at Libby Prison for a period of eight months, during which time his wounds were treated by a surgeon of the Confederate Army. He was finally exchanged, his health being such at the time of his exchange that he returned to his regiment and took command thereof, continuing active duty until the close of the war. He returned to New York, his home, and being unable to perform much manual labor, obtained a position in the custom-house, which place he occupied up to the time of his death. He filed an application for pension and was pensioned for the gunshot wound of the wrist, although it was shown that the gunshot in the back was in some degree troublesome.

The medical evidence in the case shows—first, the surgeon on duty

at parole hospital near Annapolis, Md., states that when the officer reported to him on his return from prison, he was suffering from gunshot wounds he received in action at Snicker's Gap, Virginia, one in the back received through the sword-belt, and one in the wrist, and he suffered much from both, particularly from the one in the back. The surgeon further says "Have met the general very frequently since the close of the war. He suffered continuously at times from the injury in the back, so that he had to relinquish his former business." The board of examining surgeons at New York, November 12, 1875, at the biennial examination of the pensioned officer, finds: "Injury of left lumbar region, leaving a varicose condition of vein at point of injury; interference with stooping and lifting." The physician who attended the deceased in his last illness finds primary cause of death nephritis; secondary hepatitis, results of wounds received at Snicker's Gap, Virginia.

On the first consideration of the claim of the widow the medical reviewers of the Pension Office were undecided whether the case was pensionable, and upon their recommendation a special investigation of the case was made by a special agent of the office in New York City. That investigation was thorough and is on file in the pension case. From it we find that the deceased officer did suffer very greatly from disease of those organs lying near to the point at which the gunshot wound of the back was received; and all the evidence of the officers of his regiment and his intimate associates shows that he suffered more or less from the results of this wound.

General Robert C. Schenck testifies as to the gallantry of the officer in the service, then to a knowledge of him after leaving the Army, and to the fact that he frequently complained to him of the pain he suffered in the region of the kidneys from the effects of the gunshot wound.

The deceased officer's associate inspectors of the custom-house all give testimony to the fact that he frequently complained of pain in the region of his kidneys and liver, and that these complaints covered nearly all the time from his return from the Army to the time of his death.

The surgeons of the regiment, three of whom were met by the special agent, seem to know little of the manner in which the officer was affected, but this is understood when the fact is brought to mind that the principal medical treatment the officer received in the Army was while he was in prison. It appears that the officer made a change in his medical attendant some years before his death, discarding a physician of the old school and securing the services of a homeopathic physician. The first family physician, in his testimony before the special agent, testifies that he treated the officer for inflammatory rheumatism and cough, and had a knowledge of a slight disturbance of the heart, which he, the physician, feared would ultimately develop into some lung difficulty. In closing his statement the doctor said of the deceased officer:

Our relations were always of the most friendly character, and I understand that his change of physician was due to his preference for homeopathy. I therefore did not attend him in his last illness and have no personal knowledge as to cause of death.

Dr. J. Ralsey White, who is the homeopathic doctor who attended the officer, thus swears:

I was the family physician of the deceased, Col. Edward Murray, for one year at least prior to his death. He was under my professional treatment most of the time for a complication of diseases. He had inflammation of the kidneys and had had that for a long time previous to my attendance, which, I was informed, was produced by a gunshot wound in the region of the kidneys. There was coexisting inflammation of the liver, chronic, which induced ascites, which produced exhaustion from which he died. At the time of my first interview with him he was suffering from a cough and

cold. The cause of death was correctly given in certificate to board of health, and the time from the commencement of his fatal disease until death was nearly two years. The last attack extended from January 6, 1876, to November 13, 1876. The immediate cause of officer's death was exhaustion from the above described diseases.

The certificate given to the board of health gave the cause of death cirrhosis of the liver—ascites.

The evidence as to the use of strong liquor by the deceased officer is somewhat full, but nearly all the witnesses agree that it was taken to alleviate the pain with which the officer was afflicted nearly all the time, and that a very small quantity was sufficient to render him helpless.

Dr. C. R. Downing, of New York City, states that he was called on the 22d day of April, 1876, to visit professionally the deceased officer, and in an affidavit filed with your committee, gives his knowledge of the officer's disease and cause of death as follows :

In 1865 the deponent first met said Colonel Murray, who at that time was suffering from the effects of a gunshot wound received at the battle of Snicker's Gap, Virginia, July 18, 1864. Almost immediately after the receipt of said wound, hemorrhagic diarrhea exhibited itself, being temporarily relieved by medical treatment only to return again at irregular intervals with increased severity at each return. Each depletion was followed by functional derangement of heart and liver, due to the impoverished condition of the blood. Said Colonel Murray finally died from exhaustion induced through depletion, which depletion the deponent believes was traceable to the effects of said wound.

In view of all the evidence presented to your committee, we are of the opinion that the cause of death may be ascribed to the wound which the officer received in battle, and that the widow is therefore justly entitled to her pension for the same under the law and equities of the case. We therefore report favorably upon her petition and recommend the passage of the accompanying bill, entitled "A bill granting a pension to Mary C. Murray."



J. B. F. RANDALL.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

## REPORT:

[To accompany bill H. R. 5666.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4195) granting an increase of pension to J. B. F. Randall, having had the same under consideration, respectfully submit the following report:*

The committee find from an examination of the papers presented to your committee and those on file at the Pension Office in this claim that the petitioner was a second lieutenant of Company B, Twenty-fourth New York Cavalry, and is now a pensioner at the rate of \$18 per month. His petition to Congress is that he be increased to \$31.25 per month, the same granted for pensions for like disability.

The committee find that the petitioner received a gunshot wound through the neck, which caused paralysis of the right side and partial paralysis of the whole body, leaving the system in a prostrate condition, he being unable to perform any manual labor and sometimes requiring the assistance of a second person. He also received a gunshot wound through the right thigh and left leg above the knee, which causes lameness and renders his limbs useless for any purpose requiring them in the exercise of manual labor. The committee further find that in addition to the wounds described the petitioner received five other gunshot wounds. He is only pensioned for the gunshot wound of the neck. An application made by him to the Pension Office for increase was rejected on the ground that "under the law he was receiving all that could be allowed."

In the examination given him at the Pension Office by an examining surgeon thereof, he was recommended to be rated at \$18 for the gunshot wound of the neck, one-half pension for the gunshot wound of the thigh, and one-half pension for the gunshot wound of the left leg.

Your committee believe, in view of the severe wounding of this pensioner, of his paralysis and sufferings therefrom, that he should be rated in the amount provided for by the substitute we present for the bill under consideration. We therefore recommend the passage of the bill (H. R. 5666) granting an increase of pension to J. B. F. Randall.



SOLOMON PRINDLE.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5667.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5667) granting a pension to Solomon Prindle, having had the same under consideration, beg leave to submit the following report:*

The committee find, from an examination of the papers in the case on file in the Pension Office, the petitioner was a private in Company E, Sixteenth Regiment New York Volunteers, enlisted May 15, 1861; was discharged May 22, 1863, and his application for pension was filed March 11, 1874, in which he alleges "gunshot wound over right eye, at Gaines Hill, June 27, 1862, resulting in loss of right eye."

The case was rejected by the Pension Office May 25, 1879, "On the grounds no record and inability to furnish medical evidence that wounds existed in the service or at date of discharge from the Army."

The fact that the gunshot wound was received at Gaines Hill, June 27, 1862, is sworn to by Lieut. Peter La Fontaine and Comrades Roberts and Moffatt, of the claimant's company.

Comrade Jacob Grant swears to seeing the petitioner in Albany at the time of his discharge:

His eye looked bad and weak, but it was healing up. Has no doubt it was caused by gunshot wound. Affiant has seen him often since his discharge and has heard him complain of his eye. Affiant believes the loss of said eye was caused by gunshot wound.

Comrades Grant and Roberts swear that they knew petitioner at enlistment, that his eyes were sound then, and that from the time of his discharge to the present time his eye trouble has existed and been continuous.

Dr. T. B. Nichols, who has been the petitioner's family physician since 1873, testifies to his suffering from his eye up to the present time.

The Adjutant-General's rolls report the soldier present, as alleged, at Gaines Hill at the time he states, but there are no regimental records on file or casualty lists, except for officers. The Surgeon-General's records do not show any regimental-hospital reports of this man's company.

A letter from T. B. Nicholls, examining surgeon, December 2, 1878, alleges that the disability to the petitioner was contracted subsequent to his discharge, his information being based on a statement of a woman whose name he does not give.

The case having been already rejected by the Pension Office, no

notice was taken of the communication, and your committee can understand that it may have been through malice on the part of the doctor's informant.

In view of the positive testimony of the comrades who were present at the time the disability was contracted, who saw him immediately after his discharge, and have known him since, your committee are forced to the conclusion that the man is clearly entitled to the provisions of the pension laws, and therefore recommend the passage of the accompanying bill (H. R. 5667), granting a pension to Solomon Prindle.



GEORGE T. RIGGS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1993.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1993) granting a pension to George T. Riggs, having had the same under consideration, respectfully submit the following report:*

The committee find, upon an examination of the papers originally filed in the pension case at the Pension Office, that the petitioner was a private of Company E, Eighty-third New York Volunteers; that he enlisted May 27, 1861, and was discharged November 26, 1862; that his first declaration for pension was filed March 19, 1863, the second September 2, 1864, and the third August 30, 1877. It was finally rejected February 18, 1878, on the ground "not disabled by reason of disability incurred in the service." The first declaration alleges that while in the service he contracted chronic dysentery and hemorrhages of the lungs. In the second declaration he makes the same allegation. The third declaration, that in the fall of 1861 he contracted chronic diarrhœa. He produces, in view of the fact that he had no family physician, the evidence of citizens, and asks that it be accepted as showing soundness at his enlistment. The evidence of a physician is also presented, showing that he examined the petitioner in the latter part of May, 1861, and that he found him then physically sound and robust, and in every way qualified for military service.

The evidence of Capt. Henry C. Smith, who was the captain of the company in which the petitioner served, shows that in the month of August, 1861, while doing duty at the town of Darnestown, he contracted chronic diarrhœa.

The evidence of Dr. Isaac M. Cummings shows that he "treated the petitioner for chronic diarrhœa immediately after his discharge and for about one year thereafter; benefited him some, but considered him incurable." He examined him August 17, 1877, and found him suffering from the same disease for which he treated him in 1862.

The evidence of two neighbors shows that from the time of his discharge to the present the petitioner has been continuously suffering from the disease he alleges.

The record of the Adjutant-General's Office shows him to have—

Served with his company from the time of his muster-in until the roll of September and October, 1862, report him absent, sick in hospital at Washington. Roll for January and February, 1863, report him dropped from the rolls by order of January 17, 1863. Discharged November 26, 1862, on surgeon's certificate of disability.

The certificate of disability, on which the soldier was discharged, is dated November 22, 1862, and was signed by the assistant surgeon of the United States Army in charge of Trinity general hospital, Washington, D. C. It recites that—

He has been unfit for duty for sixty days because of chronic dysentery and spitting of blood. Has been disabled as follows: May 30, 1861, sick one month at Washington of dysentery; August 15, 1861, sick two months of dysentery at Darnestown; May 25, 1862, sick five and a half months at Aquia Creek, and continuing to the present time. He raised blood May 30, September 30, and many times since. He is weak and emaciated; has a cough constantly, and just able to move about. I find him incapable of performing the duties of a soldier because of chronic dysentery and phthisia.

The first examination made by a surgeon of the Pension Office of the petitioner was in New York, January 17, 1863, in which he found him "two-thirds incapacitated," and says:

His general appearance is that of a man laboring under some exhausting disease. He has the physical signs of the first stages of pulmonary consumption, and he gives a rational and detailed account of his condition, which would indicate ulceration of rectum. I see no reason to doubt his testimony.

The second examination was made by a board of surgeons at New York, December 12, 1877, in which no disability could be found.

The third examination was made by a board of surgeons at Brooklyn, January 2, 1878, in which he was found "totally incapacitated." A full statement of the man's appearance and condition is given, and he is rated at \$8 per month.

The last examination of the petitioner was made at New York by the board in that city April 10, 1878, in which a very thorough examination was given him in accordance with the request from the Pension Office, and he is rated at \$4 per month.

Your committee believe from the full and thorough examination of the papers in the case that the petitioner did contract chronic diarrhoea in the service, for which he is entitled to a pension. We therefore report favorably upon his petition, and recommend the passage of the bill (H. R. 1993) "granting a pension to George T. Riggs."

## JULIA CASEY.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

### R E P O R T :

[To accompany bill H. R. 5668.]

*The Committee on Invalid Pensions, to whom was referred the petition of Julia Casey, having had the same under consideration, respectfully submit the following report:*

The committee find, from an examination of the papers on file in the original pension case, that the petitioner is the widow of Dennis L. Casey, who was a private of Company B, One hundred and fourteenth New York Volunteers; enlisted July 23, 1862, and was discharged June 23, 1865, having been severely wounded during his service, for which he was pensioned. He died April 14, 1877, the wound for which he was pensioned having been the cause of his death; which was proven to the satisfaction of the Pension Office we have no doubt. The widow filed her application for pension July 18, 1877, which was rejected November 13, 1878, on the ground "that the claimant's first and only husband is still living, and no evidence on file to show that she was divorced prior to her marriage with the deceased soldier." This case presents a singular feature. It appears from the sworn testimony of the petitioner, filed at the Pension Office, and which is the only evidence in the case which it all prejudices it, that the deceased soldier and herself had known each other for many years; that they had on several occasions been engaged to be married, but were prevented by the interference of friends; that she was finally forced by her family to discard the deceased soldier as a probable husband and was compelled to marry one William Simpson, who, in the course of a few days after marriage, discovered the fact of the great affection existing between the petitioner and the deceased soldier, the discovery of which fact resulted in the desertion of the petitioner by the aforesaid Simpson, which desertion occurred a few days after their marriage which was in 1859. In 1868 the petitioner and the deceased soldier, acting upon the advice of friends (the law of divorce not being recognized in the Catholic Church, of which they were both members), made a mutual agreement to live together and cohabit as man and wife, a proceeding which they were informed constituted, under the laws of the State of New York (where the parties resided), a marriage. From 1868 to 1877 the parties lived and cohabited together, and were recognized by their neighbors, friends, and associates as man and wife, the children born to them bearing the name of the soldier, and in all respects, as is shown by the evidence, there was no question as to mar-

riage relations. In 1877, probably with a view to legitimize the children, the petitioner and the deceased soldier were married by a Protestant clergyman, which fact is of record, with the affidavit of the minister performing the ceremony of marriage, and from the papers in the case nothing seems to have been heard of the first husband, who had deserted her, until the Pension Office, in considering her application for pension, required proof of his death. The widow, in her sincere endeavor to present all the facts to the Pension Office, undertook to prove the death of her husband and found to her surprise, as she was informed, that he was still living, which fact she reported to the Pension Office by affidavit sworn to on the 27th May, 1878, and in which she states that she had never seen him from the time he deserted her nineteen years previously, and had not heard from him during all that time, except the report of his death about three months after his desertion, as stated in her former affidavit. As soon as this testimony was placed on file the case was rejected in July, 1878, on the ground "that the first husband was living."

Your committee find that the petitioner has always lived respectably with the deceased soldier and bore to him five children, who are under sixteen years of age, and they as well as she were deprived of his support by his death resulting from disease contracted in the service of the United States. There is nothing in the case to show that the deceased soldier had ever married, lived, or cohabited with any one else than the petitioner, and the case shows that he regarded the petitioner as his wife. The petitioner is destitute, has been, in part, supported by charity since her husband's death, and is in feeble health.

Your committee are of the opinion that the ruling of the Pension Office upon the technical point involved in this case is not in accordance with the spirit of the law, and does great injustice to the petitioner and the children of the deceased soldier, and that the equities of the case would indicate that she should be admitted to the pension-rolls.

We therefore report favorably upon her petition, and recommend the passage of the accompanying bill (H. R. 5668) entitled "A bill granting a pension to Julia Casey."

CATHERINE SILVEY.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT :

[To accompany bill H. R. 5669.]

*The Committee on Invalid Pensions, to whom was referred the petition of Catherine Silvey, accompanied by a bill, having had the same under consideration, respectfully submit the following report:*

We find, from an examination of the papers on file in the original pension case, that the petitioner is the mother of Francis E. Silvey, who was a private of Company D, Ninety-ninth Regiment New York Volunteers, who enlisted August 1, 1861, and was discharged the service July 20, 1864; that while in the service he contracted the disease of consumption. The records show his first sickness in March and April, 1863. At the time of his discharge he was very much debilitated, and died from the effect of the disease December 11, 1866.

The mother's application for pension was filed July 18, 1876, and a large amount of evidence was presented showing the fact that the mother was more or less dependent upon the deceased soldier; that the husband of the petitioner lived about a year after the soldier's death in a broken-down condition of health.

The question raised by the Pension Office was as to the degree of dependence, and whether the petitioner was pensionable, her husband having been able to render her a support. The evidence shows that from his early boyhood the deceased soldier had contributed to the support of his mother and his family. Up to the time of his enlistment he had been working for a firm in New York, his wages being brought regularly to his mother, and by her devoted to family purposes. After his enlistment, and during his entire service in the Army, he regularly remitted to her a portion of his earnings to be by her applied to her support and that of her family.

An investigation of the claim was made by a special agent of the Pension Office, and the evidence collected by him was to the effect that the husband of the petitioner and father of the soldier was the head of a family of eight persons, the petitioner and seven children; that his wages as carpenter at the time of the soldier's enlistment and decease varied from \$12 to \$20 per week, and that his earnings, with those of the deceased soldier, had supported the family. The case was rejected by the Pension Office on the ground that "the husband of the petitioner was able to render her a sufficient support".

In this decision your committee disagree, and are firm in the belief that under the law the petitioner is entitled to a pension. The evidence

of her dependence in a measure upon the deceased soldier, the fact of his consistently contributing to her support, all induce your committee to the belief that the technicalities of the law were fully complied with.

The Pension Office does not see the matter in this light, and under a strict construction of the law reject the claim. The present condition of the applicant is that of a needy person, and the evidence shows that for a year or more before the death of her husband, which occurred as above stated, about a year after the death of the deceased soldier, she was in reduced circumstances, without means, and had no source of support. We therefore believe that she is entitled to a pension as dependent mother of the soldier who died from the effects of disease contracted in the service; and as such and in that belief we report favorably upon her prayer, and recommend the passage of the accompanying bill.

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DR. P. F. REUSS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

## REPORT:

[To accompany bill H. R. 5670.]

*The Committee on Invalid Pensions, to whom was referred the petition of Dr. P. F. Reuss, having had the same under consideration, respectfully report:*

We find from an examination of the papers on file in the pension case that this petitioner was pensioned at the rate of \$12.50, under a special act of Congress, approved June 18, 1878, for the disease of the eyes. He applied to the Commissioner of Pensions, under the acts of January 25 and March 4, 1879, for arrears of pension, which claim was rejected by the Pension Office under date of October 4, 1879, on the ground that "he is not entitled to arrears by reason of being pensioned under the provisions of a special act of Congress." He now comes to Congress asking that he be allowed a full pension instead of the half pension he is receiving, and also that he be allowed arrears.

In regard to the first proposition of the petitioner, your committee report that the pension which the petitioner is now receiving under a special act of Congress was fixed by the board of surgeons at New York City, after a thorough examination of his disability, and recommend that it be not granted; and in regard to the second proposition, your committee recommend the passage of the accompanying bill (H. R. 5670) "granting an increase of pension to Dr. P. F. Reuss," on the ground that the precedent established by this committee is to allow arrears of pensions in all cases passed upon by it. We therefore make the recommendation as above stated.





WILLIAM H. WHIPPLE.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 5671.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5671) granting a pension to William H. Whipple, having had the same under consideration, respectfully submit the following report:*

The committee find from the papers before them and those on file in the Pension Office that the petitioner is the father of George M. Whipple, who was a private of the Third New York Cavalry, having previously served two years in the Twenty-second Regiment New York Volunteer Infantry, and who died in said service at Albany Barracks, N. Y., March 28, 1864, of black measles. We further find that the application for dependent's pension was filed March 7, 1878.

The petition presented to your committee recites that the soldier during his last illness was attended by his (the soldier's) wife, who died April 1, 1864, three days after her husband, she leaving no children; that he, the petitioner, applied to the Pension Office for pension as dependent father of the deceased, and that the Pension Office rejected his claim on the ground that "the soldier left a wife living." The petition further recites that ample evidence of dependence was presented to the Pension Office, and the fact shown that he, the petitioner, a cripple, with no one to assist him, had lived with the soldier, his only son, and his wife, and been by them maintained. He therefore appeals to Congress to undo the decision of the Pension Office made under the strict requirement of the law.

The testimony in the case shows that the dependence of the father upon the son was positive; that the father, the petitioner, was a cripple from rheumatism, and that he was unable to do manual labor. The cause of rejection was solely that clause of the law which makes provision for a dependent relative only where no wife survives.

In this case, we find that the wife died three days after the soldier, of the same malignant disease that was the death-cause in his case, leaving the helpless father upon the charities of the world.

While the law is against his admission to pension, the equities of the case seem to demand the interposition of Congress. We therefore report favorably upon his prayer, and recommend the passage of the bill (H. R. 5671) granting a pension to William H. Whipple.



FRANCIS WATTS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5672.]

*The Committee on Invalid Pensions, to whom was referred the petition of Francis Watts, having had the same under consideration, respectfully report:*

The committee find from an examination of the papers on file at the Pension Office that the petitioner was a private of Company I, Eighth United States Infantry; that he enlisted May 9, 1861, and was discharged the service July 9, 1867. He filed his application for pension March 27, 1872, alleging rheumatism in the right arm. Pending the consideration of his claim his arm was amputated, and for that amputation a pension was asked. The claim was rejected by the Pension Office May 23, 1879, the ground being "amputation of right arm is not the result of rheumatism from which the claimant is said to have suffered in 1864; neither alleged or proven to have been necessary of any other cause incident to the service."

This case has attracted a great deal of attention in the Pension Office because of its apparent mysterious character and seeming discrepancies therein. The petitioner appears as a man with an *alias*, which fact is explained in an affidavit made by him, that in enlisting he assumed his mother's name rather than his own, giving as a reason that he did not desire his family to know anything of his enlistment. He further alleged that he contracted chronic rheumatism from cold and exposure, at Petersburg, Va., in 1864. He further stated, January 6, 1877, that he had not been under any treatment from the date of an operation which was performed on him at a hospital in New York after his discharge until the date of the amputation. His military service, as shown by the records of the Adjutant-General's Office, War Department, is as follows:

On the 9th of May, 1861, his company was surrendered by Colonel Reeve, at or near San Antonio, Tex., to the rebels. May 22, 1863, the company was reorganized from the recently-exchanged prisoners of war. Date of exchange not stated. He was discharged July 8, 1864, at City Point, Va., by re-enlistment as private. It is further shown that he re-enlisted July 9, 1864, in Company I of his old regiment, and the muster-rolls of that company for the months of July and August, 1864, show him absent, sick, at New York, since the 14th of July. He was reported discharged July 9, 1867, by reason of expiration of service, as quartermaster's sergeant. Rolls of his company show no records of his alleged disability.

The Surgeon-General's records do not show any disability whatever; but it is proper to state, however, that there are rolls of that company

on file. A board of five surgeons examined the petitioner at New York on the 8th of May, 1872, the examination being made in view of his application for pension. His disability is reported as "of uncertain duration," and the following particular description of his condition was given:

There are two openings of right arm, middle third, leading to necrosed bone. The arm is of no use at present. In our opinion, we think it is very probable that this is the result of exposure and lying on damp ground while a prisoner of war.

These surgeons also state that, judging from the present condition of the applicant, and from the evidence before them, it is their belief that his disability (chronic rheumatism) originated in the service aforesaid, in the line of duty.

This report, as above stated, is signed by five physicians. March 19, 1877, he submitted to another examination by the board of examining surgeons at the Pension Office in Washington City. They rated him at \$24 per month, and give the following as the description of his condition:

We find in this case loss of right arm near the shoulder-joint. Stump not well healed; one point still discharging pus, probably from necrosed bone. Says the amputation was performed January, 1876. The man has the appearance of robust health: clean, smooth skin, and not a single trace of syphilis. We do not believe he ever had the disease. Says that the disease which eventuated in the loss of his arm commenced while a prisoner of war. Prostration and exposure is a sufficient cause for necrosis. We rate the loss of arm at second grade. Of course proof is required to show connection with the service.

In furtherance of his claim for pension the petitioner placed before the Pension Office the evidence of two non-commissioned officers, sergeants of Company B of his regiment, who state that they had a knowledge of his having been treated for sickness on several occasions during his service, and "reported so on morning report book, and to the best of our knowledge the treatment was for rheumatism, which we have no doubt was contracted in the United States Army as a prisoner of war twenty-two months."

A physician, Dr. Learning, of New York City, makes affidavit that in August, 1864, he prescribed for the petitioner while at home on furlough for rheumatism. He again certifies that he treated the petitioner for rheumatism in 1867 and 1868. In another affidavit this physician says he "treated Watts in August 1867, or 1868. The treatment was not then for periostitis, as the pain and swelling were believed to be rheumatism."

Dr. R. A. Barry, another physician of New York City, swears that he treated the petitioner for rheumatism from May until August, 1868, "which, as he afterwards learned, affected the bone, producing periostitis, resulting in amputation of the limb."

Dr. E. Knight, another physician of New York City, swears that he "treated Watts for necrosis during the years 1871 and 1872 (attended by exfoliation of the os humerus, the result of periostitis)."

This is the petitioner's case as made before the Pension Office. As will be seen, he first alleged that he contracted rheumatism in 1864 in front of Petersburg, and the statements of his comrades and some of the medical men express the belief that it was contracted from exposure while a prisoner of war in Texas.

The Pension Office viewed the case with suspicion for several reasons: First, the alias; secondly, the suspicious demeanor of the applicant in his appearance before the officers of the Pension Office; third, the mystery which appeared to surround the contraction of the disease and its subsequent development. The petitioner's own statement was to the effect that he did not observe serious results from his rheumatic troubles

until 1869, at which time it would appear necrosis began. A statement from the petitioner was taken by the officers of the special service division of the Pension Office with a view of locating him from the time he left the army up to the time his arm was amputated, and upon this statement a special investigation was made by a special agent of the office, who strove to cover all the time between the petitioner's discharge and the date of the amputation, as well as to inform the office what the habits and life of the petitioner had been during that time. His investigation proved nothing save that during his service in the army, as shown by the evidence of the comrades met with by the special agent, the petitioner did suffer the rheumatic troubles and frequently complained of pain in his right arm. He was unable to do much manual labor after his discharge, and entered St. Luke's hospital in New York in December, 1873, where the following history of his case is a part of the record: "Four years before admission the patient had an attack of acute necrosis of the right humerus." At this hospital his arm was operated on by exsection. He entered Roosevelt hospital, New York City, December 29, 1875, and the history there as then taken from the records is: "Six years ago the patient first noticed that the right arm began to enlarge and was very painful, coming on suddenly without any apparent cause and being preceded by a chill." It will be seen that the four years prior to the first entry into hospital, and the six years prior to the second entry into hospital were two and a half years after his discharge, and these facts were taken by the Pension Office as insubstantial basis for the theory that the disease of the arm had its origin in the service. Dr. Learning, whose evidence as to treatment of the soldier in 1864, is the only medical testimony which positively shows rheumatism in the service, stated in an affidavit made before the special agent that he made the statement as to treatment in 1864 partly from memory, and partly relied upon the statement of the petitioner himself, that he had no record of the treatment while he was home sick on furlough in 1864.

The rejection by the Pension Office was not made upon any evidence adduced by the department through its special agent, but was rather upon theory advanced by the medical officers thereof.

Your committee have to look at the case in all its bearings and consider its equities as shown by the facts presented. The result of our examination of the evidence induces us to believe that this petitioner is properly entitled to the benefits of the provisions of the pension laws, despite the fact that the medical phase of the case is somewhat shrouded in mystery.

The committee find that the petitioner was a prisoner of war for twenty-two months in Texas, and as such, doubtless exposed to more or less hardship and privation. That he was a good soldier is shown in the fact that after being exchanged he served faithfully his term of service, then re-enlisted, and it was in his second enlistment that we find him suffering, and as shown by Dr. Learning's statement, which we are bound to recognize, treated for rheumatic troubles while home on sick furlough in August, 1864. He returned to his company and must have rendered faithful service in view of the fact that he received promotion from the position of private to that of quartermaster's sergeant, the rank he held at his discharge. He claims that the trouble in his arm was continuous from his discharge until 1867-'68, when the medical history of the case seems clear, and from that time to the amputation it can be readily understood from the medical testimony how the disability was continuous and progressive.

The board of examining surgeons at New York in 1872 find the arm of no use whatever, and the disability liable to increase. It did increase, and amputation was found necessary in 1875.

Your committee believe that while the Pension Office may be right in its construction of the law in this case, that the man is entitled to a pension for the loss of his right arm, and we therefore report favorably upon his prayer, and recommend the passage of the accompanying bill (H. R. 5672) granting a pension to Francis Watts.



HENRY REEMS.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5673.]

*The Committee on Invalid Pensions, to whom was referred the petition of Henry Reems, for arrears of pension, having had the same under consideration, beg leave to submit the following report:*

From an examination of the papers on file in the Pension Office, we find that the petitioner is a pensioner at the rate of \$50 per month, for gunshot wound in right side of abdomen, and epilepsy resulting therefrom. This amount of pension was fixed to commence from October 30, 1879, he having previously been pensioned at the rate of \$18 per month. The peculiar character of the wound received by this soldier has been made a part of the history of the Army Medical Museum, in which a photograph of the same is filed, and from the records of which your committee present the following transcript:

At the battle of Cedar Creek, October 19, 1864, Private Henry Reems, I, Thirtieth Massachusetts, aged twenty-one, was struck on the right side of the abdomen by a musket ball, which passed through the crest of the ilium, and emerged posteriorly, six inches from the wound of entrance. He was sent to the general hospital at Frederick. Numerous bits of bone were removed from both orifices of the wound. On November 18, the patient was transferred to Filbert Street Hospital in Philadelphia. There was protracted suppuration, and the patient was unable to bear his weight on the limb of the injured side for five months. On April 26, 1865, he was moved to Turner's Lane, Philadelphia, where the diagnosis of "epilepsy" was recorded. On May 10, he was again transferred to McClellan Hospital, and here the diagnosis "gunshot wound of the ilium" reappears. He was discharged from service June 4, 1865. On April 3, 1867, he visited the Army Medical Museum. The anterior cicatrix was adherent to the bone. There was partial false ankylosis of the hip, and the knee was also somewhat stiff. Reems was pensioned in 1865, and Examiner T. F. Smith stated, September 5, 1873, that the patient's "epileptiform convulsions were due to disease of the nerve centers, result of an ascending neuritis, having its origin in a nerve in the wound." A more detailed account of this case will be found on page 225 of the second Surgical volume of the Medical and Surgical History of the Rebellion.

The petitioner claims that his disabilities have been the same from the time of his wounding to the present, and in the opinion of your committee he is entitled to receive his arrears of pension in the same ratio as for the disability he now receives, to date from the time of his discharge, and we therefore recommend the passage of the accompanying bill (H. R. 5673) granting increase and arrears of pension to Henry Reems.





CHARLES H. WISNER.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5674.]

*The Committee on Invalid Pensions, to whom was referred the petition of Charles H. Wisner, accompanied by a bill (H. R. 5674) granting a pension to Charles H. Wisner, having had the same under consideration, respectfully submit the following report:*

The committee find, from an examination of the papers on file in the original pension case at the Pension Office, that the petitioner was mustered into the service of the United States September 3, 1862, and was discharged from the same January 18, 1863, having served during that time as lieutenant in Company F, One hundred and thirty-sixth New York State Volunteers. It is also shown in the evidence that at the time of his discharge the petitioner was suffering from chronic diarrhœa, contracted while in said service. The petitioner applied for a pension on account of said disability June 3, 1870, which application was rejected September 3, 1878, on the ground that the disability alleged was not in any degree pensionable.

The evidence submitted by the claimant as to the contraction and continuous nature of his disability is very full, and shows that he contracted typhoid fever about the 1st of October, 1862, from which resulted chronic diarrhœa, and which has continued to the present time. The surgeon of the regiment, Dr. Hovey, swears that he examined the petitioner before muster and passed him as a sound man. Dr. Hovey again testifies that about October 1, 1862, the petitioner was taken sick with typhoid fever, which continued for a long time, and resulted in chronic diarrhœa. The standing of Dr. Hovey is verified to the Pension Office by the Adjutant-General's Office. Lieutenant-Colonel Faulkner, of the petitioner's regiment, testifies that he was sick for a long time with typhoid fever and chronic diarrhœa.

Dr. A. W. Tucker testifies that for the last five years the petitioner has been attended by him for numerous attacks of his malady, and shows its continuous nature from 1864 to the present time.

Dr. James Record testifies substantially to the same facts, having been acquainted and had personal medical knowledge of him for ten or twelve years. Other witnesses, who lived with the petitioner and had constant knowledge of him, testify to the same facts.

The records of the Adjutant-General's Office show him to be sick in regimental hospital up to November 2, 1862. On the 1st day of August, 1878, the petitioner had a medical examination before the board of

examining surgeons, which board failed to find sufficient disease to rate him as pensionable. Description of the petitioner is thus given: Height, 5 feet 5; weight, 122 pounds; age, 46; pulse, 80; respiration, 18. "He alleges chronic diarrhœa. We cannot find any indication of disability from cause alleged; tongue clean, and no tenderness on pressure over abdominal region; is slightly anæmic. He states that his diarrhœa is not persistent; that there is a reoccurrence of it every two or three months."

The petition appears before your committee as destitute and in feeble physical condition, and weighs now 115 pounds, and appears so debilitated as to be unable to provide for himself by manual labor. There is no question as to the contraction of the disease in the Army, and the testimony of the regimental surgeon is positive on that point. The company morning reports show that fact to be true. The evidence is full as to the continuous nature of the disability. The present appearance and condition of the petitioner corroborates the evidences of the witnesses as to the continuous nature of his disease. We therefore believe him entitled to a pension.

While it seems strange to your committee that the board of surgeons could not find sufficient disability whereon to rate his pension, we believe that he should be rated, and think he will upon another examination by the medical examiners of the Pension Office. We therefore return the petition with the accompanying bill, and recommend the passage of the same.

FRANCES FRAZER.

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APRIL 7, 1880.—Laid on the table and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4226.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4226) to grant a pension to Frances Frazer, having had the same under consideration, respectfully report :*

The committee find that the petitioner is the widow of William Frazer, late a corporal of Company L, Fifth New York Cavalry ; that he enlisted September 27, 1861, was discharged January 5, 1863, and died from disease incurred in the service September 30, 1870.

The widow's application for pension was filed May 6, 1879, and was admitted October 22, 1879, by the direction of the acting Commissioner of Pensions, the pension to date the day after the soldier's death.

We further find that the death cause was proven to be the result of chronic diarrhea which was contracted in the service. We further find that the deceased soldier during his life-time did not file an application for invalid pension, and the case to your committee assumes the form of a claim which has never been acted upon by the Pension Office.

The petition of the widow prays, and the bill introduced for her relief provides, for the payment of pension to her from the date of her husband's discharge.

Your committee fail to see that it can act in the premises, in view of the fact that there was no application made by the deceased soldier. We therefore report adversely upon the bill, and ask to be discharged from further consideration of it.



MARTIN BUELL, GUARDIAN.

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APRIL 7, 1890.—Laid on the table and ordered to be printed.

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Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

*The Committee on Invalid Pensions, to whom was referred the petition of Martin Buell, guardian of the minor child of Frederick Johnson, late hospital steward United States Army, who died in Washington, D. C., April 7, 1867, having had the same under consideration, respectfully report:*

That the evidence in the case originally filed at the Pension Office is very voluminous, and embraces very thorough investigations made as to the merits of this claim by special agents of the Pension Office. It is alleged by the guardian that the widow of the deceased soldier made application for pension after his death, but died while that application was pending. The petitioner, having been appointed guardian to the minor child of the soldier, made another application for pension for his ward, which has been rejected by the Pension Office on the ground that "the cause of death of the soldier did not originate in the service."

To the minds of your committee this action on the part of the Pension Office was just and proper, in view of the fact that while it is generally alleged the soldier was a vigorous, hearty man on his entering the service, there is nothing in the case to induce your committee to believe that he contracted any disease therein which would result in the insanity with which he was afflicted a year or two before his death, and which culminated in his suicide.

The case was considered by the Committee on Invalid Pensions of the Forty-fifth Congress, and by them rejected; and we see no reason to change the action of that committee. We therefore report adversely on the petition, and ask to be discharged from the further consideration thereof.



PETER CLAESGENS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 1197.]

*The Committee on Invalid Pensions, to whom was referred the memorial of Theodore L. Sayre and others, praying the passage of an act granting a pension to Col. Peter Claesgens, of Utica, N. Y., have carefully investigated the subject-matter, and report:*

That the said Peter Claesgens was, on June 15, 1863, captain of Company F, One hundred and forty-sixth New York Infantry. He afterward became by successive promotions major and lieutenant-colonel thereof, and was honorably mustered out of the service on July 16, 1865.

He claims a pension because of alleged disability caused by neuralgia, weakness of eyesight, loss of memory, &c., resulting from a sunstroke received upon June 15, 1862, while upon a march between Manassas and Green Springs, near Aldie, Va.

This claim has been rejected by the Pension Bureau for the reason that there is, in its opinion, "no pensionable disability traceable to the service satisfactorily."

In the opinion of the committee the said Peter Claesgens has, by the testimony of his regimental surgeon and by other medical testimony, fully established the fact that he was in sound and robust health when he entered the service. He has proved by the said surgeon and several of the officers of his company that he received the sunstroke at the time and under the circumstances claimed by him, and he has proved by physicians and others that from the time of his discharge from the Army he has suffered from neuralgia, defective eyesight, and loss of memory, as claimed by him, unfitting him to a great extent for regular manual labor.

The Pension Bureau directed an examining surgeon to examine the said Claesgens and report the result. The surgeon reported him one-half incapacitated from obtaining his subsistence by manual labor by reason of disability resulting from the causes already set out, and that he believed that the said disability did originate in the service in the line of duty.

The Pension Bureau directed that a new examination should be had before another examining surgeon, which resulted like the first, except that the surgeon making the new examination reported him as three-fourths incapacitated.

The committee think that the said Peter Claesgens has fully established his claim to be placed upon the pension rolls, and accordingly accompany this report with a bill for his relief, which they recommend may be passed.





JOHN H. JACKSON.

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APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1952.]

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1952) granting a pension to John H. Jackson, having had the same under consideration, would respectfully report:*

John H. Jackson, a resident of Pleasantville, Sullivan County, Indiana, late sergeant of Company G, One Hundred and forty-ninth Indiana Volunteers, enlisted February 14, 1865, and was discharged September 22, 1865. He filed his declaration for a pension November 5, 1875, alleging therein, and in affidavits subsequently filed, that he contracted chronic diarrhoea about March 12, 1865, at Edgefield, Tenn., that while suffering therefrom he was furloughed home about June 14, 1865, on the recommendation of his regimental surgeon; and that about August 25, 1865, in returning to his regiment from said furlough, the train on which he was being borne broke down through a bridge at Richland Creek, Tennessee, causing a severe injury to his head and breast, which has resulted in disease of the brain and heart. His averments are supported by the testimony of Capt. James D. Parvin, of his company, and by comrade Jonathan Hart, as to the origin of disability in the service, and that of Dr. James McDowell as to his condition while at home on furlough, and since his discharge. The Adjutant-General reports him injured by a railroad accident at the time alleged, and the Surgeon-General shows him treated for the alleged injury to head; but the records of the War Department fail to show that the furlough, on returning from which he was injured, was granted by reason of sickness. Hence the claim was rejected, May 7, 1877. That the furlough was granted by reason of sickness—chronic diarrhoea—is fully proven by the affidavit of Lieutenant Weir, who came home with him, and the testimony of Dr. James McDowell, who treated him while at home.

In view of all these facts, which prove conclusively how meritorious this claim is, taken in consideration with all the evidence, official and *ex parte*, your committee are of the opinion that the claimant is justly and rightfully entitled to a pension; they therefore report back the accompanying bill, with a recommendation that it be passed.



HENRY T. SKINNER.

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APRIL 7, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 5675.]

*The Committee on Invalid Pensions, to whom was referred the petition of Henry T. Skinner, praying a restoration to the pension rolls, having had the same under consideration, would respectfully report :*

Henry T. Skinner was a private in Company G, One hundred and forty-ninth Regiment Indiana Volunteers, enlisted on the 31st day of January, 1865, and discharged from hospital at Huntsville, Ala., May 13, 1865, with inflammation of lungs, resulting from measles contracted in the service and in the line of duty, and with diarrhea. He made the necessary proof, and was admitted as a pensioner at the rate of \$4 a month, commencing on the 17th day of May, 1865. This continued until the 14th day of May, 1873, when his pension was increased from \$4 per month to \$6, which he continued to draw until the 8th day of November, 1877, when the Commissioner of Pensions ordered his name dropped from the rolls, for the reason "that he was not disabled by any disability due to the service." This was the result of a special investigation by an agent of the department, and was so manifestly unjust to the claimant that your committee do not feel that the facts brought out by the investigation of the special agent should have been accepted as a reason for dropping his name from the pension roll, for the reason that the testimony of Louisa J. Bell is the only affidavit taken by the special agent, outside of the medical examination, and her testimony is simply that "she knew claimant when a boy, and that he was afflicted with an ulcer or abscess of the side under the shoulder long before he went into the service."

The board of examining surgeons at Bloomington, Ind., of which Dr. Dodds was president, examined claimant by request of the special agent, and reported to the special agent in connection with the investigation "that they had carefully examined Henry T. Skinner, a pensioner under certificate No. 112,115, by reason of alleged disability resulting from measles and chronic diarrhea, received in the service of the United States, and, in our opinion, the said pensioner's disability is one-fourth incident to the service." Yet in the face of this testimony the Commissioner of Pensions, on the affidavit of one woman, who could neither read nor write, dropped Henry T. Skinner's name from the pension roll.

In addition to the testimony of the board of examining surgeons at Bloomington, Ind., Dr. H. V. Norvell, who was examining surgeon at

Bloomfield, Ind., Dr. Minnich, of Spencer, Ind., who was surgeon of claimant's regiment, and Dr. Mullinix, of Worthington, who was assistant surgeon of the regiment, and Dr. E. J. Jackson, of Linton, Ind., his family physician, all certify that his disability is at least one-half, and that it is the result of measles and chronic diarrhea contracted in the service. Dr. Harrah certifies to his being sound before the war, and Drs. Clark and Roberts as to treatment for the alleged disability since the war. The records of the War Department show his treatment while in service for these diseases; and in view of these facts, and other evidence considered in the case, your committee are of the opinion that the name of Henry T. Skinner should be restored to the pension rolls. They therefore report favorably, and recommend that the bill accompanying this report be passed.



BETSEY GRANTEER.

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APRIL 7, 1880.—Laid on the table and ordered to be printed.

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Mr. J. W. RYON, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 223.]

*The Committee on Revolutionary Pensions and the War of 1812, to whom was referred the petition of U. A. Porter and fourteen other citizens of Pennsylvania, praying that a pension be granted to Mrs. Betsey Granteer, on account of the services of her husband, Henry Ingham, in the war of 1812, having had the same under consideration, respectfully submit the following report:*

The petition of the citizens praying for said pension discloses that the said Betsey Granteer was the widow of Henry Ingham, a soldier of the war of 1812. That she was divorced from the said Ingham and afterwards married a second time, and that her second husband has been deceased eleven years. That she is eighty-five years of age, in a very feeble and infirm state of health, and, withal, very poor and destitute.

No evidence of a confirmatory character accompanies the petition. No evidence of the soldier's alleged enlistment and service, nor any testimony as to the length of said service, appears in the case.

The Committee are of the opinion that there is not sufficient evidence to warrant a departure from the general law, and by special act of Congress grant a pension in this case. No special merit on the part of the soldier or the claimant has been shown whereby the committee might be influenced to recommend relief in this case. They therefore report adversely upon the claim, return the petition to the House, and ask that the same be laid upon the table and the committee discharged from the further consideration of the same.



## ESTHER YOST.

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APRIL 7, 1880.—Laid on the table and ordered to be printed.

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Mr. J. W. RYON, from the Committee on Pensions, submitted the following

### REPORT:

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the petition of Esther Yost, of Pittsburgh, Pa., praying for a pension as surviving daughter of Peter Yost, a soldier of the war of 1812, having had the same under consideration, respectfully submit the following report :*

The petition of the said Esther Yost sets forth that she is deformed, aged, and infirm; that her father died in the year 1815, of disease contracted while in the military service of the government during the war of 1812; that her mother, after the death of her husband, became deranged in mind, and that the claimant supported her until the year 1855, at which time she died.

It also appears from the papers on file that Peter Yost, the father of Esther, was a private in Capt. Jacob Fryers' company of Pennsylvania militia, and served from the 18th of September to the 14th of December, 1814, when the company was disbanded and fully paid.

None of the provisions of the several acts granting pensions for services in the war of 1812 are broad enough to embrace the children of deceased soldiers, and it is believed that no sufficient reason is shown why the general liberal policy of the government should be extended so as to give relief in this particular case.

The committee, therefore, return the petition to the House, and ask that the same be laid upon the table, and that the committee be discharged from its further consideration.





ESTHER YOST.

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APRIL 7, 1880.—Laid on the table and ordered to be printed.

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Mr. J. W. RYON, from the Committee on Pensions, submitted the following

R E P O R T :

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the petition of Esther Yost, of Pittsburgh, Pa., praying for a pension as surviving daughter of Peter Yost, a soldier of the war of 1812, having had the same under consideration, respectfully submit the following report :*

The petition of the said Esther Yost sets forth that she is deformed, aged, and infirm ; that her father died in the year 1815, of disease contracted while in the military service of the government during the war of 1812 ; that her mother, after the death of her husband, became deranged in mind, and that the claimant supported her until the year 1855, at which time she died.

It also appears from the papers on file that Peter Yost, the father of Esther, was a private in Capt. Jacob Fryers' company of Pennsylvania militia, and served from the 18th of September to the 14th of December, 1814, when the company was disbanded and fully paid.

None of the provisions of the several acts granting pensions for services in the war of 1812 are broad enough to embrace the children of deceased soldiers, and it is believed that no sufficient reason is shown why the general liberal policy of the government should be extended so as to give relief in this particular case.

The committee, therefore, return the petition to the House, and ask that the same be laid upon the table, and that the committee be discharged from its further consideration.



BRIDGES NEAR SHREVEPORT AND MONROE, LA.

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APRIL 7, 1880.—Referred to the House Calendar and ordered to be printed.

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Mr. SLEMONS, from the Committee on Railways and Canals, submitted the following

REPORT:

[To accompany bill H. R. 5676.]

*The Committee on Railways and Canals, to whom was referred bill H. R. 2494, have had the same under consideration, and ask leave to report :*

That said bill, granting the right to build bridges over and across the Ouachita and Red Rivers, is drawn in strict conformity to the navigation laws, and the committee recommend that the same do pass.

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JACOB SRITE.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. WHITEAKER, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 400.]

*The Committee on Pensions, to whom was referred the bill (H. R. 400) granting a pension to Jacob Srite, of Walker County, Georgia, having had the same under consideration, respectfully submit the following report:*

It is in evidence that the said Jacob Srite made application on the 11th day of September, 1871, for a pension for services during the war of 1812, and filed the following declaration, to wit: That he served the full period of sixty days in the military service of the United States in that war; that he volunteered in Capt. Joseph Everett's company, in Jackson's division, at Brentsville, Sullivan County, Tennessee, on the 8th day of January, 1814, and was honorably discharged at the same place on the 15th of March, 1814, and served as a teamster, and was under the command of General Andrew Jackson at the battle of the Horse Shoe. He further states that he was drafted on the 14th of October, 1814, following, and served in Capt. Joseph Scott's company, and was still under General Jackson's command; that he served under the draft one month, when he hired a substitute and was honorably discharged, but that his discharge is lost; that he does not remember the name of his colonel or brigadier-general; that he obtained a land warrant for said services September 17, 1859, the number of which is 90004; that he served about sixty-five days in the first service and about thirty days in the second.

The Third Auditor, March 29, 1872, returns the information to the Commissioner of Pensions that the name of Jacob Srite is not borne on the rolls of the company commanded by Capt. Joseph Everett; on the 11th of September, 1872, he also returns the information that his name is not borne on the rolls of Capt. Joseph Scott's company of Tennessee militia.

The Commissioner of Pensions, on the 24th of September, 1872, rejected the application on the ground that he was "not an enlisted or drafted man, as shown in bounty-land papers," the chief of the bounty-land division certifying that his land warrant was issued on the testimony of comrades that he had served as a teamster in Capt. Joseph Everett's company of Tennessee militia.

On the 17th of June, 1875, Srite makes affidavit before the clerk of the superior court of Walker County, Georgia, that the statements made in his declaration for pension at the Pension Office are true, that he enlisted as a private in said company and was ordered to take charge of a team and haul baggage for said command, and that after rendering said

service he was regularly and honorably discharged; that he is past eighty-two years of age and in needy circumstances.

The clerk of the court, N. Dickerson, certifies to his good character, and believes him to be the person he represents himself to be. There is no evidence of a confirmatory character to the sworn statements of the claimant. There is, however, a possibility that in the absence of teamsters he was detailed for that work after enlistment, and was discharged from the service as a teamster.

Under the rules of evidence adopted in the consideration of such cases, it would not appear that he had established his claim, as there is no evidence to show, other than his own sworn statement, that he was an enlisted man. He has failed, also, to give the name of his substitute as a drafted man, as in that case his period of service might have been established, inasmuch as the substitute may have received the discharge papers instead of himself as principal.

Under this state of the case, the committee are of the opinion that he is not entitled to relief, not having shown the required period of service in the war of 1812, and they therefor return the bill to the House and ask that it be laid upon the table, and that the committee be discharged from the further consideration of the same.

MARGARET A. SPENCER.

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APRIL 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. WHITEAKER, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 428.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 428) granting a pension to Margaret A. Spencer, widow of Chester Root, captain of the Third Regiment of Artillery, United States Army, war of 1812, having had the same under consideration, respectfully submit the following report:*

It is in evidence from information obtained from the office of the Adjutant-General, United States Army, that the said Chester Root was confirmed by the Senate as second lieutenant Third Artillery, April 25, 1812; that he was commissioned as such to rank from July 6, 1812, and promoted first lieutenant March 13, 1813, and that he was retained in the reorganization of 1815 as first lieutenant Corps of Artillery, with rank from March 13, 1813; promoted captain March 5, 1819, and disbanded in June, 1821.

As the widow of said officer, which fact is established by competent testimony, she would, under existing laws of the United States, be entitled to a pension. But it is also in evidence that after the death of the said Chester Root, which occurred at Mobile, Ala., in the year 1854, she was again married, to wit, on or about the 3d day of October, 1855, to Richard Spencer, formerly a member of Congress from the State of Maryland.

It is in evidence from the affidavit of the claimant that upon the death of her second husband, Richard Spencer, which occurred in the year 1868, she was left in very dependent circumstances, and is now aged, infirm, childless, and without means of support.

It is also in evidence, from the affidavit of Hon. Patrick Byrns, who was probate judge of Baldwin County, Alabama, from the year 1822 to 1855, that she is the daughter of Capt. Thomas Drum, with whom he states he was personally acquainted, who was massacred by the Indians, at Fort Mims, in the "Creek Indian war," while serving in the line of his duty as an officer of volunteers United States Army. Also that the said Thomas Drum was possessed of considerable wealth in horses, sheep, and cattle, valued at several thousands of dollars, which, together with all of the buildings of his farm, were destroyed during the said Indian war, and for which his heirs have received no compensation.

While on general principles the committee are opposed to legislation of this character, as tending to unduly enlarge and increase the pension-

list, yet, in view of the foregoing facts, of the long service of her first husband, the loss of her father in the Indian war while in the military service of the United States, and the destruction of his entire fortune in said war, for which no remuneration has ever been granted by the government to his heirs, and, also, in view of her age, infirmity, and destitute condition, the committee are of the opinion that she is entitled to relief, and therefore return the bill to the House, and recommend the passage of the same with an amendment.





FANNY DIMMICK.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. MILES, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1395.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1395) granting a pension to Fanny Dimmick, having had the same under consideration, beg leave to report as follows :*

From the evidence submitted they are of the opinion that there is not shadow of a claim, and therefore they report the bill back and ask to be discharged from further consideration thereof, and that the same be laid on the table.



OLIVER L. WHEELER.

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APRIL 8, 1890.—Laid on the table and ordered to be printed.

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Mr. MILES, from the Committee on Pensions, submitted the following

REPORT:

*The Committee on Pensions, to whom was referred the petition of Oliver L. Wheeler, having had the same under consideration, beg leave to report:*

That they have had the same under consideration; and that not being able to find any evidence or proof to substantiate the statement of said petitioner, and no one appearing in behalf thereof, they ask to be discharged from further consideration of the same, and that it be laid on the table.

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MATHIAS FOSHER.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. FARR, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4120.]

*The Committee on Pensions, to whom was referred the bill (H. R. 4120) granting a pension to Mathias Foshier, having had the same under consideration, beg leave to report as follows:*

From the evidence in possession of the committee it appears that Mathias Foshier, of Indiana, formerly of Virginia, served in the militia of the latter State during the war of 1812. The affidavit of Samuel Deardoff shows that he was a soldier in Captain Jones' company of Virginia militia, war of 1812; that said Foshier was a member of said company at that time, and that to his personal knowledge Foshier served more than sixty days; that he enlisted on or about the 28th day of August, 1813, and was discharged on or about the 28th day of February, 1814, and that he (Deardoff) is now eighty-eight years old.

The affidavit of Jacob Foshier sets forth the facts that he is a brother of Mathias Foshier; is seventy-nine years old; that he knew of the services of his brother, as above stated, as a soldier in the war of 1812; that after his enlistment he left home with the company and was absent for more than four months, and that when he returned other soldiers were with him. The affidavit of David Foshier, brother of Mathias Foshier, states that to his personal knowledge said Mathias enlisted in Captain Jones's company, Virginia militia, on or about August 15, 1813, and was discharged about the middle of February, 1814, the exact date he cannot recall. It also appears that said Mathias Foshier was granted a land warrant. Various other letters and affidavits are in evidence, but your committee do not deem it necessary to enumerate them here. This claim was rejected by the Pension Office because the rolls in the Third Auditor's Office do not show Foshier's name, but the affidavits, &c., convince your committee that service was rendered. Therefore, in view of all these facts, we beg leave to report the bill back to the House and to recommend its passage.



STEPHEN P. BENTON.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. FARR, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5677.]

*The Committee on Pensions, to whom was referred the petition of Stephen Porter Benton, of Baldwin, Me., having had the same under consideration, beg leave to report as follows:*

It is in evidence, from the statement of the petitioner under oath, that said Benton enlisted at Denmark, Me., April 15, 1813, and went with other recruits to Portland, Me., and were attached to the Thirty-fourth Regiment, United States Army, Col. Jos. D. Leonard; from thence to Fort Sumner, thence to Fort Preble, and was attached to the company commanded by Capt. Robert Douglas, First Lieut. Nathaniel S. Benton, Second Lieut. Robert Gibson, and detailed as waiter to Captain Douglas until September 10, 1813, when the company was sent to the frontier. Benton being left behind as one of the garrison, just after the fight between the Enterprise and the Boxer he was placed on guard on the ramparts of Fort Preble and remained all night; at the time of the funeral of the officers slain in said fight he and a sergeant fired minute guns for two hours. He served as a private soldier and performed garrison duty until December 1, 1813, when he was discharged, and a certificate to that effect given him by Colonel Leonard, which, however, has been lost. Said Benton did further service as a substitute, said service occurring in the fall of 1814 and continuing for forty days, and consisted of building batteries on Munjoy Hill. At the time of this service Benton was sixteen years old, having been born September 2, 1798. He again enlisted in November, 1819, and served until March, 1821.

The certificate of three selectmen of Baldwin is attached to said Benton's statement, testifying that they consider him a man of "good morals, truth, and veracity." The affidavit of General Rufus Ingall, United States Army, of the same purport is also in evidence.

The affidavit of Alfred Benton sets forth the fact that he enlisted said petitioner and fully verifies his statements as to service in the Army; appended to this is the certificate of the selectmen and postmaster of Denmark, that Alfred Benton "is a man of unblemished character and unimpeachable veracity and integrity."

This claim for pension was disallowed by the department for the reason that the rolls in the Third Auditor's Office do not show Benton's name.

In view of the evidence as above stated, your committee are of the opinion the petitioner did serve in the war of 1812, and should in justice receive a pension; and therefore they report the accompanying bill and recommend its passage.





JOHN M. DORSEY AND WILLIAM F. SHEPARD.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed,

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Mr. DICKEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 212.]

*The Committee on Claims, to whom was referred Senate bill No. 212, entitled "A bill for the relief of John M. Dorsey and William F. Shepard," have considered the same, and submit the following report thereon :*

This bill has been three times favorably reported in the Senate and once in the House of Representatives. The bill passed the Senate February 17, 1876. No adverse report has ever been made upon it.

We adopt the report of Mr. Pratt, made to the Senate from this committee February 11, 1875, and recommend the passage of the bill.

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[Senate Report No. 649, Forty-third Congress, second session.]

Mr. PRATT submitted the following report, to accompany bill S. 1073:

*The Committee on Claims, to whom was referred the bill (S. 1073) for the relief of John M. Dorsey and William Shepard, submit the following report :*

The bill directs the payment to John M. Dorsey of \$9,038, and to William Shepard \$3,758, in full settlement for beef and supplies furnished the troops by Wallace, Dorsey & Shepard and by S. B. Wallace, in quelling the Indian disturbances in the Territory of Utah, now the State of Nevada, in the year 1860.

The bill is based on the petition of Dorsey and Shepard to Congress, which is sworn to by Dorsey, and is substantially as follows in its statements: That in the spring of 1860 they were engaged in business in said Territory, when great alarm existed among the inhabitants of the western portions of Utah, in consequence of the depredations of the Pi-Ute Indians; that an irregular force of about one hundred of the best citizens was organized, and armed with such weapons as they could procure, and went out from Virginia and Carson Cities to chastise the Indians; that the expedition fell into ambush, and about sixty of the citizens, including Major Ormsby, their commander, were killed, and the others dispersed; that great excitement and alarm followed among the citizens, and it was feared the neighboring towns would be attacked, the Indians having assembled in large force. There were no troops, arms, or government nearer than Salt Lake, five or six hundred miles distant. Under these circumstances the governor of California, and the United States officer in command of the Department of the Pacific, sent forward to Virginia City arms and ammunition in charge of proper officers. Two or three hundred volunteers also came along with the United States troops. The citizens of Virginia City and its vicinity united with these volunteers and regular troops and organized a regiment, and selected Col. John C. Hays to take command. The troops, thus organized and commanded, marched against the Indians, and, after some severe fighting, conquered a peace.

The memorial further states that upon the organization of this force it was without quartermaster or commissary supplies, and in order to obtain them Richard N. Snowden was appointed commissary, and as such entered into a verbal contract with said

Wallace and the petitioners to furnish certain supplies; that, in conformity therewith, the three named furnished them to the amount of \$12,868, which was certified to, and vouchers therefor issued by said Snowden as commissary. One for the sum of \$1,528 was issued to S. B. Wallace; one to John M. Dorsey, S. B. Wallace, and William Shepard for \$5,050; and a third one to the three last-named parties for \$6,190; that Wallace died in 1862, but before his death assigned to Dorsey all his right, title, and interest in all of the certified accounts; that Dorsey is the just owner of the first-mentioned account (that for \$1,528) and of two-thirds of the other two, amounting in the aggregate to \$9,088, and that Shepard is the owner of one-third of the last two, amounting to \$3,780. The petitioners close by saying they furnished these supplies for the purposes stated in good faith, believing that they would be paid in a short time, and that the prices charged were low for the time, places, and circumstances.

At the suggestion of the subcommittee having this bill in charge, Mr. Dorsey has appended an affidavit to the memorial, and in this he swears that he is one of the claimants therein; that he knows all the statements made therein as true of his own knowledge; that the supplies were actually furnished as stated; that the amount claimed is justly due, the charges reasonable, and that no part thereof has been paid him or any of the other parties; that the amount of money subscribed by the citizens of Virginia City and vicinity had been exhausted, and this fact was the reason and necessity for Colonel Hays and Colonel Snowden making the verbal contract with claimants to furnish said supplies, and had they not, in conjunction with Jordan and McPike, furnished the necessary supplies, the expedition must have failed.

Mr. Dorsey further states in explanation of the long delay in bringing the claim before Congress that it had been duly filed in the War Department, which had finally ruled that there was no law which authorized its payment; that it was then put into the hands of agents, who did nothing; that neither of the claimants possessed the pecuniary means to come to Washington; that about the year 1865 the triplicate vouchers were placed in the hands of Hon. D. R. Ashley, then a member of Congress from Nevada, to present to Congress, but he lost all the papers; that circumstance and sickness in his family prevented him from coming to Washington until recently, and from employing agents. He closes by saying much of his evidence is among the papers in the claim of McPike, which was allowed at the last session of Congress and has been paid.

The following papers are furnished by the War Department in regard to these claims, and sufficiently explain themselves:

*The United States of America to S. B. Wallace, Dr.*

To supplies furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians, in the Territory of Utah, as follows:

To 600 pounds of flour, at 70 cents.....	\$420 00
To 500 pounds sugar, at 60 cents.....	300 00
To 400 pounds barley, at 55 cents.....	220 00
To 125 pounds California bacon, at 80 cents.....	100 00
To 100 pounds Java coffee, at 65 cents.....	65 00
To 510 pounds fresh beef, at 30 cents.....	153 00
To twenty-two (22) days' service of the pack-mules, at \$3.50 per day.....	231 00
To 3 camp-kettles, at \$3.....	9 00
To 3 frying pans, at \$2.....	6 00
To 2 dozen tin cups, at \$6.....	12 00
To 2 dozen tin plates, at \$3.....	6 00
To 1 dozen sheath knives, at \$6.....	6 00
Total.....	1,528 00

I certify, on honor, that the above amount of provisions were furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians, in the Territory of Utah, by S. B. Wallace; that the prices charged therefor are just and reasonable, and that the same were received by me, and were necessary for public service.

Dated at Pyramid Lake, June 3, 1860.

RICHARD A. SNOWDEN,  
Commissary Utah Volunteers.

*The United States of America to John M. Dorsey, S. B. Wallace, and William Shepard, Dr.*

To supplies furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians, in the Territory of Utah, as follows:

To 800 pounds bacon, at 80 cents.....	\$640 00
To 600 pounds coffee, at 45 cents.....	270 00
To 480 pounds soda-crackers, at 80 cents.....	384 00

o 30 gallons sirup, at \$5 .....	\$150 00
o 10 gallons pickles, at \$5 .....	50 00
o 200 pounds table-salt, at 80 cents .....	160 00
o 400 pounds rice, at 45 cents .....	180 00
o 1,000 pounds Orleans sugar, at 51 cents .....	510 00
o 400 pounds beans, at 45 cents .....	180 00
o 200 pounds soap, at 50 cents .....	100 00
o 5,000 pounds flour, at 45 cents .....	2,250 00
o 400 pounds barley, at 44 cents .....	176 00
<b>Total .....</b>	<b>5,050 00</b>

I certify, on honor, that the above amount of provisions was actually furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians, in Utah Territory; that the prices charged therefor by Dorsey, Wallace, and Shepard are just and reasonable, and that the same were necessary for the public service.

Dated at Carson River, June 10, 1860.

RICHARD A. SNOWDEN,  
*Commissary Utah Volunteers.*

*The United States of America to Jno. M. Dorsey, S. B. Wallace, and William Shepard, Dr.*

For supplies furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians, in the Territory of Utah, as follows:

o 3,500 pounds of flour, at 70 cents .....	\$2,450 00
o 400 pounds barley, at 55 cents .....	220 00
o 1,100 pounds sugar, at 60 cents .....	660 00
o 600 pounds Java coffee, at 70 cents .....	420 00
o 10 gallons sirup, at \$7 .....	70 00
o 20 sacks (5 pounds each) table-salt, at \$3 .....	60 00
o 7,700 pounds fresh beef, at 30 cents .....	2,310 00
<b>Total .....</b>	<b>6,190 00</b>

I certify, on honor, that the above amount of provisions was actually furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians, in the Territory of Utah; that the prices charged therefor by Dorsey, Wallace, and Shepard are just and reasonable, and that the same were necessary for public service.

Dated at Pyramid Lake, June 3, 1860.

RICH'D A. SNOWDEN,  
*Commissary Utah Volunteers.*

WAR DEPARTMENT, December 10, 1869.

The Secretary of War, in compliance with the request of the Committee on Claims of the United States Senate, dated April 1, 1869, has the honor to furnish all the information in possession of the War Department relative to the war against the Pah-Utah Indians, in the year 1860, and to return to said committee the list of claims against the United States arising out of said war.

WM. W. BELKNAP,  
*Secretary of War.*

*List of claims for the war against the Pah-Utah Indians, 1862.*

No. 1. S. B. Wallace .....	\$1,528 00
2. Dorsey, Wallace & Shepard .....	6,190 00
3. Dorsey, Wallace & Shepard .....	5,150 00
4. Jordan & McPike .....	3,093 50
5. Jordan & McPike .....	9,900 00
6. Jordan & McPike .....	5,040 00
7. Jordan & McPike .....	1,440 00
8. John Jordan .....	360 00
9. C. S. Strong, treasurer, &c .....	1,105 00
10. C. S. Strong, treasurer, &c .....	1,000 00
11. Jesse Mayhew .....	200 00
<b>Total .....</b>	<b>35,006 50</b>

I certify that the foregoing are correct copies of papers on file with settlement No. 8711, June 19, 1874, in favor of John McPike.

A. M. GANGEWER,  
*Chief Clerk, Third Auditor's Office.*

From the foregoing papers it will be seen that Richard A. Snowden, the commissary of the Utah volunteers, certifies that S. B. Wallace furnished the expedition with supplies to the amount of \$1,528; that the prices charged were just and reasonable, and that the supplies were received by him and were necessary for public service; and that in like manner Dorsey, Wallace & Shepard furnished the supplies mentioned in the two other vouchers—one calling for \$5,050, the other for \$6,190.

The list of claims seems to be a summary of all the supplies furnished for the expedition, as well by the parties now before Congress as others not now here, amounting in the aggregate to \$35,006.50.

W. T. Shepard made an affidavit, on 10th December last, that he, associated with John M. Dorsey and S. S. Wallace, furnished, in the year 1860, certain supplies for the subsistence of the troops in Utah Territory during that year, who, under the command of Col. John C. Hays, were engaged in suppressing Indian hostilities, for which supplies he and the said Dorsey were about to apply to Congress for payment, and that in the year 1861, Wallace, for a valuable consideration paid to him by Dorsey, sold, assigned, and transferred by written assignment his equal one-third interest in and to said claim and demand to the said Dorsey, who was the legal owner and holder thereof, and entitled to receive Wallace's share.

This written assignment is not produced, but Dorsey verbally alleges it has been lost, that Wallace died insolvent, and no administrator was ever appointed to administer upon his estate.

It appears by this affidavit that there is an error in the bill in giving the names of Wallace and Shepard; that Wallace's name was S. S. Wallace, and Shepard's, W. F. Shepard.

John C. Hays makes affidavit that he was commander of the volunteer force at the Indian outbreak which occurred in 1860, and that he believes that the said Dorsey, Shepard & Wallace faithfully performed the verbal contract made with him as commander and Richard M. Snowden as commissary, and that they furnished flour, bacon, salt, &c., for the use of the volunteers under his command, and that they should have been paid long ago.

A. E. Shiras, assistant commissary-general of subsistence, writes to J. M. Latta, attorney at Washington, under date of April 1, 1867, in relation to these claims, which had been filed in the Commissary-General's Office, as follows:

"No records in this office or in that of the Adjutant-General show any authorization by the government of the regiment or command for which the stores appear to have been procured, or that any law has ever been enacted which would authorize the payment of the accounts."

These references exhaust all that is before the committee in this case in the way of papers.

It appears, however, that on June 17, 1874, an act was passed directing the Secretary of the Treasury to pay the sum of \$19,473.50 to John M. McPike, in full settlement for beef and supplies furnished the troops by Jordan & McPike in quelling the Indian disturbances in the Territory of Utah, now the State of Nevada, in 1860. (See United States Statutes, page 40 of private acts, chapter 296.)

There appears to the committee no good reason to doubt the existence of the disturbances as alleged in the memorial, and the necessity for the supplies furnished the forces engaged in the expedition against the Indians. As to the amount, kind, and value of these supplies there is no evidence, leaving out of question the affidavit of Dorsey, beyond the certificate of the gentleman who exercised the functions of commissary on the occasion. His affidavit is not furnished, nor is any reason given for its absence. The affidavit of Colonel Hays, while it refers to these bills, does not state amounts or prices. Nor does the affidavit of Shepard. These, however, are the identical accounts filed in the War Department, and Dorsey swears to their correctness, to his ownership of Wallace's portion, and that no part of the account has been paid.

Senate Report No. 155, made in the case of Jordan & McPike, has been shown to the committee, which was the basis of the private act above quoted. That case differs from this in the fact that there was a written contract made between Jordan and McPike of the one part, and Snowden of the other, fixing the price of the beef to be furnished. The affidavit of Colonel Hays furnished in that case was more full than in this, showing the urgency of the occasion for organizing this military force, and the economy with which the expedition was concluded. He says the volunteers neither asked nor received any pay.

The good character and business standing of Dorsey are indorsed by one of the Senators from Nevada.

The committee have come to the conclusion to recommend the passage of the bill on the strength of the evidence as above set forth, and because of the former action of Congress in allowing a similar claim made by Jordan & McPike.

SARAH B. FRANKLIN.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. DICKEY, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 5318.]

*The Committee on Claims, to whom was referred the bill (H. R. 5318) for the relief of Mrs. Sarah B. Franklin, have had the same under consideration, and submit the following report :*

The claimant is the widow of Charles L. Franklin, deceased, late a commander in the United States Navy, and the bill proposes to pay to her the sum of \$500, to indemnify her for clothing of herself and children, and other personal property, destroyed at Pensacola, Fla., in 1874, to prevent the spread of yellow fever, and for expenses incurred in nursing her said husband, who died of yellow fever at Pensacola at that time. This claim was before the Forty-fourth and Forty-fifth Congresses. She claimed \$750, and the Committee on Claims reported in favor of \$500, the amount proposed in the present bill.

We adopt the report of Mr. Pratt, from the Committee on Claims of the Forty-fourth Congress, and recommend the passage of the bill.

The following is the report of Mr. Pratt:

That, during the fall of 1874, said Charles L. Franklin was stationed at the Pensacola navy-yard, in Florida. That his wife and children were with him there at that time. That, in September, 1874, while at said Pensacola navy-yard with his wife and children, he was attacked with yellow fever—which prevailed there at that time—and died.

That, in consequence of the prevalence of said fever, of the death of her husband, and of the illness of herself and children, claimant was subjected to great expense and to heavy loss in the destruction of property, as is shown by her affidavit hereto annexed.

The committee are of opinion that claimant ought to be reimbursed for these expenses and losses; and therefore recommend that the bill do pass.

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STATE OF OHIO, *Ross County*, ss :

Personally came before me, Thomas Worthington, a notary public in and for said county, Sarah B. Franklin, to me well known, and of lawful age, who, after being first duly sworn, deposes as follows:

That she is the widow of Commander Charles L. Franklin, formerly of the United States Navy, and who, during the prevalence of the yellow fever at the Pensacola navy-yard, in Florida, in September, October, and November, 1874, was stationed at that post, at which time and place she and their children were with him. That during said time her said husband was attacked with said fever, and died thereof on or about September 18, 1874. That, in consequence of the prevalence of said epidemic, of the death of her husband, and the illness of herself and children, she was compelled to

incur very heavy losses and undergo great expenses, of which the following is a partial statement:

Property destroyed: consisting of three mattresses, four pairs of pillows, one pair of blankets, and sundry other smaller articles .....	\$160
Extra services for nursing .....	60
Interment and removal of Commander Franklin .....	25
Expenses of detention at the navy-yard during quarantine .....	75
Sacrifice of household effects .....	110
Expenses of going North .....	130
Total .....	750

And further the deponent saith not.

SARAH B. FRANKLIN.

Sworn to and subscribed before me this third day of May, 1876. In witness whereof I hereunto set my hand and notarial seal.

[SEAL.]

THOMAS WORTHINGTON,  
Notary Public, Ross County, Ohio.

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JOHN A. SUTTER.

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APRIL 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. DICKEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5678.]

*The Committee on Claims, to whom were referred the memorial and papers of John A. Sutter, asking relief, respectfully report that they have had the same under consideration, and find:*

That it appears from the memorial signed by Gen. W. T. Sherman and other prominent and distinguished Army as well as Navy officers, who were operating as such in California and on that coast during the Mexican war, and a large number of prominent and well-known citizens, early residents of that State, "that they were and are familiar with the history and career of Gen. John A. Sutter during many of the years of his residence in that country, and conversant with his deeds of public philanthropy and private generosity in the early days of the settlement of California."

These memorialists, who are personally cognizant of the willing sacrifices made and the important part taken by General Sutter in the development of the great empire of human prosperity, bear strong testimony to his merits, and the duty of the United States to provide for his support, during the few remaining years left him, in a manner becoming his former position in life and among men.

In this connection your committee deem it not improper to state that it appears from the reports of the exploring expeditions of Wilkes and Frémont that before the acquisition of California by the United States, General Sutter, then a resident of that country, was a man of great influence as Mexican military governor of Upper California; that he was possessed of great wealth, consisting of large grants of lands from the Mexican authorities, and immense herds of horses, cattle, sheep, &c.; that as a colonial head, through his energy and bravery, he had succeeded in subduing and partially civilizing the wild tribes then inhabiting the country which is now the great State of California.

For the purpose of establishing and maintaining his colony, and subduing and controlling the Indians he found there, he constructed what has since been known as Fort Sutter, and mounted it with artillery. By this means and by the use of the Indians in his employ and under his control he protected his immense herds of stock and cultivated his large fields of grain.

His known devotion to the principles of American institutions drew to his fort and to his support many American settlers.

We find the following account of General Sutter and his operations

in California contained in the Report of the Exploring Expedition of Admiral Wilkes (vol. 5, pp. 178, 179), in which Lieutenant-Commandant Ringgold states that—

When Captain Sutter first settled here in 1839 he was surrounded by some of the most hostile tribes of Indians on the river, but by his energy and management, with the aid of a small party of trappers, he has thus far prevented opposition to his plans. He has even succeeded in winning the good will of the Indians, who are now laboring for him in building houses and a line of wall to protect him against the inroads or attacks that he apprehends more from the *present authorities* than from the tribes about him, who are now working in his employ. The extent of his stock amounts to 1,000 horses, 2,500 cattle, and about 1,000 sheep, many of which are now to be seen around his premises, giving them an appearance of civilization. The duties I have already named might be thought enough for the supervision of one person, but to these must be added the direction of a large party of trappers and hunters, mostly Americans, who enter into competition with those of the Hudson Bay Company, and attention to the property of the Russian establishment at Ross and Bodega, which has just been transferred to him for the consideration of \$30,000.

During our stay, there was much apprehension on the part of some that the present governor of the district next west of New Helvetia—the name of Sutter's possessions—felt jealous of the power and influence that Captain Sutter was obtaining in the country, and it was thought that had it not been for the force which the latter could bring to oppose any attempt to dislodge him it would have been tried. In the meantime Captain Sutter is using all his energies to render himself impregnable.

This is the official account of the operations of General Sutter by one of our most distinguished naval officers in 1841. Afterwards, General Sutter was visited by Col. John C. Frémont, in charge of an overland exploring expedition sent out under the direction of the United States, who reached Fort Sutter with his surveying party in an almost starving condition; and, as shown by the official report of Colonel Frémont, General Sutter showed himself a generous friend to the Americans, and immediately supplied Colonel Frémont and his party with fresh horses, mules, and other necessary supplies. It appears from all the official reports that General Sutter made no secret of his American sympathies.

In the fall of 1845, the war between the United States and Mexico being in contemplation, the Mexican authorities, distrusting General Sutter, and being desirous of dislodging him, sent a commission composed of Senator Castillero and General Castro, governor of California, authorized to purchase the New Helvetia possessions from him. This commission offered Sutter \$100,000 in money and the mission lands of San José and the cattle belonging to the same, where he would be less dangerous than in the interior, for his fort and possessions. This offer, as shown by the secretary of the commission, was declined by General Sutter on the ground that he did not desire to leave his American settlers to the mercy of the Mexicans.

Soon after this the war between the United States and Mexico was declared, during which the War Department, being informed of the sympathy of General Sutter with the United States, gave confidential instructions to Gen. S. W. Kearny, who was ordered to California, as follows:

It is understood that a considerable number of American citizens are now settled on the Sacramento River near Sutter's establishment, called New Helvetia, who are well disposed towards the United States. Should you, on your arrival in the country, find this to be the true state of things there, you are authorized to organize and receive into the service of the United States such portions of these citizens as you may think useful to aid you to hold possession of the country. (See Senate Doc. No. 5, page 29, Thirtieth Congress.)

It seems that Colonel Frémont, who was at that time engaged in another surveying expedition, reached Fort Sutter before General Kearny, and being well acquainted with General Sutter and knowing his sympathies for the United States, proceeded, with the sanction of Sutter, to



form a battalion from among General Sutter's men, with which the United States held that part of the country and protected the Americans there. Sutter's fort was the base of the operations of the Americans. The history of the war shows that on the 7th of July, 1846, the American Commodore Sloat took possession of Monterey and hoisted the American flag, and on the next day an English fleet under command of Admiral Seymour appeared at that port for the purpose of possessing the same in the name of Great Britain, pursuant to negotiations between that power and Mexico for the cession of California to England. There is no doubt but the authoritative and formal possession of California by the United States was greatly hastened by the friendship and timely assistance of General Sutter. His invaluable service in that regard is shown by the statement of General Sherman in a letter to a personal friend, recently published, in which he says, that "*to him [Sutter], more than any single person, are we indebted for the conquest of California, with all its treasures.*"

Public history shows that General Sutter seemed to have had a prophetic appreciation of the growing power and ultimate success of the United States in the Mexican war. The triumphant advance of our armies to the Pacific coast and the change of jurisdiction were hailed with joy, and our forces were cordially welcomed by this eminent pioneer, whose large possessions were thus brought under the power and protection of our government.

But the political change which thus brought the petitioner and his flourishing colony into the embrace of this Republic, and which seemed to promise so much for the increase and security of the wealth accumulated by his long and laborious exertions, was not destined to confer any benefit whatever upon him. That which enriched the whole country and gave sudden fortunes to numerous adventurers brought nothing but disaster to General Sutter. The discovery of gold in 1848, which was first made in digging a mill-race by him, caused a great rush of settlers from the States, many of whom forcibly occupied his lands.

The rejection of his "Sobrante" grant of twenty-two leagues of land by the Supreme Court of the United States, after it had been pronounced valid by the board of commissioners and by the United States district court of California, completed the record of his ruin. This grant contained about 97,000 acres of land, for which, at the minimum price, the government received about the sum of \$122,000.

It appears that on December 22, 1844, Manuel Micheltorena, governor and commandant of the Californias, conferred upon General Sutter the power and authority of granting lands within that governmental department to citizens; which grants made by General Sutter, under that authority, have been confirmed by the courts, and the lands patented to the grantees by the United States.

At the time that Governor Micheltorena conferred this power on General Sutter he promised Sutter, in consideration of military services rendered by him to the Mexican Government, to grant him the Sobrante lands belonging to the New Helvetia grant, and but a few weeks thereafter, and on the 5th day of February, 1845, actually made the grant promised. So it seems the grant made directly by Micheltorena to General Sutter was rejected by the court on the sole ground of the want of authority in Governor Micheltorena to make such a grant; while the grants made by Sutter, under authority delegated to him by Micheltorena, were approved by the board of commissioners and the district court of California as valid, and titles thereto passed from the United States to such grantees.

It is scarcely to be doubted, however, that under the Mexican Government Sutter's Sobrante grant would have been confirmed, while under ours the spirit of the pre-emption and homestead laws produced such a popular feeling against large grants of land, that even the administration of justice by the courts seems to have been brought insensibly, and perhaps naturally and correctly, under its control.

The decision of our highest tribunal against the validity of this grant must be accepted as an authoritative adjudication of that question, which leaves no other authority for Sutter to appeal to but Congress.

In a number of similar cases Congress has not hesitated to give relief in some form or other; usually by authorizing the parties whose grants had been rejected to enter the lands embraced in the rejected grants at the minimum price, and thus save themselves from the consequences of the failure of titles they had warranted; notable among these is that of the Vallejo grant, rejected by the Supreme Court. In that case Congress passed a special act for the benefit of the grantee and his assigns.

It is very certain that no other case could appeal more strongly to the cause of justice or the sympathy of Congress than that of General Sutter. The actual losses he has sustained, as shown by his memorial, and which is corroborated by the statements of others, summarized, are as follows: Expenses in money and services, which formed the original consideration of the grant, \$50,000; surveys and taxes paid on the same, \$50,000; cost of litigation, extending through years, including fees to eminent counsel, witness fees, and traveling expenses, &c., \$125,000; amount paid out to make good the covenants of deeds upon the grant over and above what was received from sales, \$100,000; making a total loss to him of \$325,000, as a result of the decision of the Supreme Court.

Aside from this actual loss, it must be borne in mind that the value of the grant of which he was thus dispossessed, had it been confirmed to him, would, upon a moderate estimate, have reached the sum of \$1,000,000.

The petitioner is not asking the government to make compensation in reference to the land, inasmuch as it cannot be appropriated in the manner adopted in other cases. However, the precedents would seem to justify an act for the relief of the petitioner. The other losses sustained, and services rendered by him, may well be considered as persuasive to a fair and liberal provision being made by Congress for him.

The committee find that the Committee on Private Land Claims, of the House of Representatives of the Forty-fourth Congress, to whom the memorial of the petitioner was then referred, made a report to the House on June 30, 1876, recommending the passage of a bill appropriating \$50,000, to be paid Gen. John A. Sutter, in full satisfaction for his services and losses, and whatever equities he may have had under the said Sobrante grant. Inasmuch as the same relief cannot now be afforded him that has heretofore been extended to others in similar cases, because the lands embraced in the said Sobrante grant have long since passed from the possession of the United States to individuals, and cannot be appropriated to him upon his paying to the government the minimum price of public lands, therefore your committee would recommend the payment to the petitioner in full of his claim a sum in gross, and for that purpose report the accompanying bill, and recommend its passage.

HENRY O. DE AHNA.

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APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3484.]

*Your committee, having had under consideration bill H. R. 3484, for the relief of Henry O. De Ahna, beg leave to report thereon:*

The history of this case is very fully set forth in House Report No. 82, third session Forty-fifth Congress.

Your committee concur in the conclusions therein reached, that the case of the claimant is a very extreme and exceptional instance "of official misfortune and distress, attributable to no fault of his, and one which strongly appeals to the justice of the government he has faithfully served."

After a careful consideration of the evidence submitted, your committee have reached the conclusion that the amounts heretofore allowed claimant have proven but a scanty and meager compensation for the actual expenses and loss of time incurred by him, and that he is substantially without redress or indemnity for his services and the extraordinary hardships and humiliation to which he has been subjected. In consideration of these circumstances your committee are of the opinion that claimant should, in justice, be allowed the further sum of one thousand dollars. Your committee therefore report back the said bill, with the recommendation that the said sum of one thousand dollars be inserted in lieu of the amount named therein, and that thereupon the same do pass.



C. H. HOWARD.

APRIL 5, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

## REPORT:

[To accompany bill H. R. 2995.]

*The Committee on Claims, having had under consideration the bill (H. R. 2995) for the relief of C. H. Howard, submit the following report:*

It appears from the evidence submitted that Mr. Howard is the postmaster at Osage Mission, Neosho County, Kansas; that during the night of January 21, 1879, his office was broken open by burglars, his safe containing the funds and supplies of the office blown open with powder or other explosive, and the postage-stamps and money of the office contained therein abstracted therefrom and carried away.

Amount of stamps taken.....	\$365 66
Cash from sale of stamps .....	100 00
Money-order funds.....	19 80
Total .....	485 46

The robbery was promptly reported by Mr. Howard to the Post-Office Department, and special agents immediately detailed to examine and report upon the case. The burglars were traced to Sherman, Tex., where they were arrested and returned to Kansas for trial. One has already been tried and convicted, and is now serving out his sentence in the penitentiary of that State; another is awaiting trial.

It appears from the report of the special agents that a store in another part of the town of Osage was entered during the same night of the post-office robbery, and in like manner the safe blown open and the contents feloniously abstracted, evidently by the same burglars.

It further appears from the special reports that the post-office was kept in a frame building fronting on the main street of the town; in the rear of the office was a store-room used for the storage of express-matter, Mr. Howard being both express agent and postmaster; entrance was effected by breaking in at a window on one side of the building. The windows were not very securely guarded, and like most of the business houses of the town the building used for a post-office was comparatively easy to enter. In view of this fact the valuables of the office were kept in a large and commodious safe, which it was expected would afford ample security for the contents thereof. The force of the explosion by which it was burst open drove the heavy iron door some 15 feet across the room.

It further appears from the report that the safe of the postmaster was one purchased by himself for the protection of the funds and property of the office; that Mr. Howard used every means in his power to secure

the detection and arrest of the burglars down to the day of their apprehension; and that in the opinion of the special agents he should not be held responsible for the loss.

It further appears from the evidence submitted that no postage-stamps were found in the possession of the burglars, and from the testimony taken at Topeka, Kans., it was ascertained that they had been destroyed. A few silver coins, blackened as if by smoke, were found on their persons, however, and some watches stolen from the store which had been entered on the same night of the post-office robbery were recovered in a pawn-broker's shop in Denison, near where the thieves were captured. There was also taken from the safe of the postmaster three registered letters; one containing \$3, one containing \$16.50, and one containing legal papers. The mutilated envelopes of the three registered letters were secured by the special agent and transmitted to the Post-Office Department. They were found on the floor of the office.

In conclusion, your committee is of the opinion, upon the case disclosed, that Mr. Howard is entitled to the relief prayed, and therefore recommend the passage of the accompanying bill allowing him \$400.



GERMAN NATIONAL BANK OF LOUISVILLE, KY.

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FEB 8, 1860.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 621.]

*The Committee on Claims, to whom was referred the petition of the German National Bank of Louisville, Ky., having had the same under consideration, beg leave to report :*

That on the 5th day of January, 1875, the German National Bank of Louisville, Ky., addressed a letter to the Ninth National Bank, New York City, inclosing certain coin coupons of United States 5-20 bonds, amounting to the sum of \$313.50. On the same day, the letter and coupons were inclosed in an envelope addressed to the Ninth National Bank, New York, N. Y., sealed, and deposited and registered at the post-office at Louisville, Ky. Two days thereafter, said letter and contents were destroyed by fire resulting from an accident which befell the mail train on the Baltimore and Ohio Railroad between the cities of Baltimore and Washington.

Upon application to the department for the redemption of these destroyed coupons, on furnishing a bond of indemnity as provided for in section 3702, U. S. Revised Statutes, the Secretary of the Treasury decided that as coupons were not "interest-bearing securities" they did not entirely come within the provisions of the law.

Your committee are of opinion that as these coupons were destroyed while in possession of the government, without fault or negligence on the part of the owner, and as the bond indemnity would in any event afford full protection, the amount thereof should be paid as prayed for, and they report a bill accordingly.





LEANDER M. BLACK.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5679.]

*The Committee on Claims, having had under consideration the bill (H. R. 1335) for the relief of Leander M. Black, submit the following report thereon:*

It appears from the evidence furnished in support of this claim, that Black was a freighter in Nebraska and Colorado in the year 1865. That in June of that year a number of his teams were engaged by the government to transport stores from Nebraska City to Fort Laramie, for the use of troops then operating in the field under General Connor in the Powder River region beyond Fort Laramie. That said teams were loaded at Nebraska City with corn, which was duly transported and delivered to the proper officer of the government at or near Fort Laramie, some time in the month of July of that year. That upon the return trip, in obedience to the orders of General Connor, the teams were loaded with lumber for the use of the government at Fort Sedgwick (Julesburg). That upon the delivery of the lumber at Fort Sedgwick, the teams proceeded upon their return trip to Nebraska City for the purpose of reloading for a second trip to Camp Collins. That on or about the 27th day of July, and when the train had reached a point near Cottonwood, about 100 miles east of Fort Sedgwick (Julesburg), on its return, it was stopped in its further progress by the order of the commanding officer at Fort Sedgwick (Julesburg), and the whole outfit, comprising 21 wagons, 215 oxen, and 26 employés, detained for the period of thirty-four days, that is to say, until the fore part of the month of September following.

The order for the detention of the train seems to have been a verbal one. No trace of it has been discovered by the War Department. It appears from official documents submitted to your committee, that a thorough search of the contemporaneous records of the Department of the Plains, in which the detention occurred, has been made without bringing to light anything relating to the subject.

The officer in command at Fort Sedgwick in July, 1865, was Capt. C. H. McNally, now on the retired list. In a letter to the War Department, under date of September 23, 1875, he says:

I was in command of Camp Rankin, Julesburg, C. T., at the time mentioned. If his train was detained, as asserted by him, I must have been ordered to do so from headquarters, District of the Plains, Fort Laramie, Dak., but I do not remember *this particular case*. I have no data to go by. I only remember that on several occasions I received orders to stop trains, &c. Capt. R. S. Westbrook, assistant quartermaster, was at that time depot quartermaster at Julesburg, and he probably could furnish some information on this subject.

Captain Westbrook, in an affidavit made February 25, 1878, and submitted to your committee, says :

I am acquainted with the circumstances of the detention of Leander M. Black's train by order of the commanding officer of that post, Julesburg, on their return trip in 1865. Black's train was freighted with government supplies (corn) to Fort Laramie. Trains thus freighted were subject to the orders of the commanding officer on their return trip. Black was ordered to load back to Fort Sedgwick with wood or lumber, and an escort of soldiers under command of Captain Shanks accompanied the train. It became necessary during the trip that some of the soldiers should take the place of drivers to the teams, for which extra service Mr. Black was willing to pay them.

Upon arriving at Fort Sedgwick Black proposed to pay the men, but Captain Shanks claimed that the money should be paid to him. This Black refused to do and paid the money to the men. Shanks then obtained an order from the commanding officer, Colonel McNally, requiring the men to pay the money to him (Shanks). Mr. Black and myself then telegraphed to Gen. P. E. Connor, at Fort Laramie, who, in reply, ordered Shanks to return the money to the men. This so incensed Shanks that he made the charge against Black for aiding deserting soldiers to escape. Upon this charge the order to detain the train and arrest the wagon-master was issued.

The train was detained at Cottonwood Station, 100 miles east of Fort Sedgwick, and the wagon-master brought back to Fort Sedgwick for trial. A court-martial was convened to try the case, in which I took part. After a full and careful investigation of all the facts in the case the charges proved to be unfounded and the prisoner was discharged.

Mr. Coffey, the wagon-master, in an affidavit made February 14, 1878, says :

Having delivered, by means of said train, a large lot of grain at Fort Laramie, I was returning in charge of said train, in order to get more to deliver at Fort Collins when the train was stopped about August, 1865, near Cottonwood, by the commanding officer belonging to the Federal Army in command at Julesburg. The train at the time belonged to said Black, and consisted of 21 wagons and 250 oxen. There were 26 persons engaged and employed in and about said train, consisting of 21 teamsters, a cook, two herders, myself and assistant. The train was detained by the officer stopping the same for a period of about a month, more or less.

There was no just cause whatever for the stoppage of said train or its detention during the time aforesaid by said commanding officer. By reason of the stoppage of said train it did not reach its point of destination before the close of the season, and in consequence was caught in a snow-storm at Valley Station, better known as Moore's Ranch, in Colorado Territory, where we lost a number of head of cattle, and were obliged to feed hay at an enormous cost, and in consequence we failed to get through to Fort Collins that season.

The statements of Captain Westbrook and the wagon-master, Coffey, seem to leave no doubt about the fact of the detention of the train and the arrest and trial of the wagon-master as set forth. No record of the court-martial has ever been discovered by the War Department, although diligent inquiry has undoubtedly been made. How the detention of the train for the prolonged period of thirty-four days was an incident to the arrest and trial of the wagon-master does not appear. The wagon-master seems to have been the only person charged with any offense, and it seems incredible that the commanding officer at Fort Sedgwick (Julesburg) should have detained the entire train so long a time, for the reason that the wagon-master was charged with assisting deserters to escape. Your committee are inclined to the opinion that some other motive for the detention of the train must have existed. The only explanation which seems to be at all satisfactory is that the teams may have been held in reserve for use in case they were needed for General Connor's Powder River expedition against the Indians then being made; and it would seem from documents submitted that the commanding officer at Fort Sedgwick at that time was making great efforts to supply the demand for teams. But whatever may have been the cause of the detention, the fact seems to be beyond dispute; and the question then arises, is the claimant entitled to relief; and, if so, to what extent?

and here it becomes necessary to remark that Mr. Black sought relief from the hands of the War Department, which was denied, for the reason that his claim was one for unliquidated damages and beyond the power of that department to adjust. The Secretary of War, in transmitting his claim to the consideration of the House of Representatives, writes as follows:

WAR DEPARTMENT,  
Washington City, April 18, 1878.

The Secretary of War has the honor to transmit to the House of Representatives, for the consideration of the Committee on Claims, papers in the claim of L. M. Black for detention of his train in 1865 at Cottonwood, Colo., with report of Quartermaster-General thereon, dated the 13th ultimo. Attention is invited to the remarks of the Judge-Advocate-General, indorsed on the report of the Quartermaster-General, as follows:

"While the present claim is most clearly one for unliquidated damages, and therefore, as indicated by the Quartermaster-General, beyond the authority of an executive department to pass upon and allow, it is yet one of which the equities (if the facts are as stated) would probably commend it to the consideration of Congress if presented to that body."

These views are concurred in, and the case is recommended to the favorable consideration of Congress.

GEO. W. MCCRARY,  
Secretary of War.

The SPEAKER House of Representatives.

Upon the right of the claimant to relief your committee are of the opinion his claim is a meritorious one. It was clearly an implied condition of the employment of claimant's teams that they should be permitted to return without unnecessary hinderance or delay. The enforced detention for the period of thirty-four days was a manifest breach of this condition, and upon every principle of justice the claimant would seem to be entitled to some indemnity for the loss occasioned thereby.

The claimant, in presenting his case, asks to be allowed for 20 teams of 5 yoke of oxen each, at the rate of \$15 per day, making an aggregate of \$10,200.

It seems that the claimant made diligent effort to get his teams released. It appears from the sworn statement of P. T. Turnley, who was chief quartermaster of the Department of the Plains, stationed at Denver City in 1865, that the claimant was not with the teams at the time they were stopped, but was then on his way from Fort Laramie to Denver City, where he was informed of the order issued by the commanding officer at Fort Sedgwick (Julesburg) to stop the teams; that he immediately procured Turnley to make a written request by mail that the teams be allowed to proceed; that such permission was not granted until after the lapse of some thirty-four days.

In the opinion of your committee, it appears that the government ought, under all the circumstances, to be charged with the use of the teams at a fair rate of compensation *per diem* for the period of the detention. The Quartermaster-General, in a communication to the Secretary of War under date of January 17, 1879, seems to be of the opinion that the measure of compensation should be governed by the rate allowed for the detention of teams in *contracts for wagon transportation* of the season of 1865, which rate was \$5 per day per team. Your committee cannot concur in this suggestion. It is obvious that a prolonged and enforced detention of an entire train for the period of thirty-four days, involving larger expenses and serious interruption of business calculations, cannot, with any degree of propriety whatever, be treated as an ordinary case of detention or delay, incident to a contract of employment.

It abundantly appears from documents submitted that \$10 per day

was the lowest price paid by the government for teams of that character in that locality during that season, and that frequently a much higher rate was paid.

Your committee are therefore of the opinion that the claimant is justly entitled to compensation at the rate of \$10 per day for each team for the period of thirty-four days, making an aggregate sum of \$6,800.

Your committee therefore recommend the passage of the accompanying substitute for said H. R. 1335.

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STEPHEN P. YEOMANS AND ANDREW LEECH.

MAY 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

W. C. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5680.]

*The Committee on Claims, having had under consideration the bill (H. R. 1110) for the relief of Stephen P. Yeomans and Andrew Leech, beg leave to submit the following report:*

The claimants in this case seek indemnity for clerk hire and office rent expended by them respectively as register and receiver of the Sioux City land office, Iowa.

Stephen P. Yeomans was appointed register March 7, 1855, and remained in said office until May, 1861, something over six years. He seeks compensation upon the following basis:

Office rent, at \$600 per annum .....	\$3, 600
As clerk six years, at \$1,000 per annum .....	6, 000
Additional clerk hire .....	2, 000
Total office rent and clerk hire .....	11, 600

He also prays compensation for services in investigating, by order of the Secretary of the Interior, charges against a receiver at Omaha, Nebraska, and the surveyor-general's office in Kansas, of \$500. Also for services in depositing money at Dubuque, received from the receiver at Sioux City, in the sum of \$300, making a total of \$12,400.

Andrew Leech was appointed October 8, 1855, and continued in such office till March 31, A. D. 1860, a period of nearly four years and one-half. He prays compensation upon the following basis:

Clerk hire .....	\$4, 000
Office rent and incidental expenses .....	1, 500
Total .....	5, 500

In response to an inquiry addressed to the honorable Secretary of the Interior, by your committee, the acting Commissioner of the General Land Office, in a letter under date of February 10, 1880 (herewith submitted), says:

It appears from the records of this office that Andrew Leech was receiver of public lands at the land office at Sioux City, Iowa, from the 29th November, 1855, to the 1st March, 1860, and that Stephen P. Yeoman's was register at the same place during that said period. The register and receiver during the whole of the time were paid their salaries, and were each allowed the fees and commissions authorized by law on the business of said office, even to maximum compensation.

1. No allowances were made for "clerk-hire or office-rent" during their terms of

office, for the reason that such allowances were not made twenty or twenty-five years ago, the time of their incumbency.

2. Mr. Yeomans, as register, has not been allowed anything "for depositing at Dubuque," for the reason that he was not required nor authorized by law to make deposits.

3. No credit has been given the disbursing agent for the register's claim for services in investigating charges against the surveyor-general's office in Kansas.

It appears abundantly, from the evidence submitted to your committee, that both Yeomans and Leech supposed themselves to be entitled, as a part of the emoluments of their office, to certain warrant charges exacted of parties entering government land agreeably to the various acts of Congress on that subject, and more particularly the sixth section of the act of March 3, 1855, which provides—

That registers and receivers of the several land offices shall be severally authorized to charge and receive for their services in locating all warrants under the provisions of this act the same compensation or percentage to which they are entitled by law for sales of the public lands for cash at the rate of \$1 per acre, the said compensation to be paid by the assignees or holders of said warrants.

These warrant charges were, in the aggregate, very considerable, and had they belonged to these officers, would have rendered the emoluments of these positions sufficient to cover all necessary expenses and afford, at the same time, ample salary for the incumbents thereof.

The claim to these charges, as a part of the emoluments of these offices, seems to have been universal among registers and receivers. It was based upon the construction given to the said tenth section of the act of March 3, 1855, and the various other acts of Congress relating to the sale of public lands, by several eminent lawyers, and notably among others the late Reverdy Johnson, of Baltimore.

It seems, however, that the Secretary of the Treasury did not acquiesce in this claim upon the part of registers and receivers, but, on the contrary, insisted that the salary and perquisites of these officers were limited by the act of Congress of April 20, 1818 (3 Stat., 466), to the sum of \$3,000 per annum as the maximum amount. Suits were instituted by the government to settle the construction of the various acts of Congress bearing on the question in controversy.

Two cases were commenced in 1858 in the United States district court for the district of Iowa, one against Lysander W. Babbitt, as register of the land office at Kaneshville, Iowa, and one against Robert Cole, register at Chariton, Iowa. These suits were decided by the district court of Iowa against the government, Judge Love affirming the right of the defendants to retain the charges as a part of the emoluments of their respective offices. The cases were subsequently taken by writ of error to the Supreme Court of the United States, where the decision of the district court was reversed, the court holding that the maximum amount of the emoluments of these offices was fixed by the act of 1818 at the sum of \$3,000. The opinion of the Supreme Court is reported in 1st Black, page 55.

Under this decision of the Supreme Court the claimants were compelled to account to the government for all receipts of their offices in excess of the sum of \$3,000 per annum.

It appears from a letter from the acting Commissioner of the General Land Office, under date of February 19, 1880 (herewith submitted), that the claimant Leech, as the receiver of public moneys at the land office at Sioux City, Iowa, "collected and paid over as fees on military bounty-land warrants the sum of \$21,602.11 between the 3d day of December, 1855, and the 31st day of March, A. D. 1860.

It is thus seen that had the claimants been correct in their interpreta-

tion of the law, the annual incomes of their respective offices would have been very considerably greater than the sum of \$3,000. Having been disappointed in what they insist were their just expectations in regard to the emoluments of their offices, they now ask to be reimbursed for what they allege were really extraordinary expenses growing out of the exigences of the public service and necessarily incurred by them in the proper management of their offices, to wit, clerk hire and office rent, and for which, as they assert, no provision or allowance has ever been made them.

It is obvious that these claimants might have realized from their respective offices the full amount of salaries at the rate of \$3,000 per annum, upon a much smaller volume of business than appears to have been in fact transacted by them. From the evidence submitted to your committee, it is clear that the claimants chose rather to afford the public every reasonable facility for the transaction of business. The rush westward for lands in those days was very great. The exigences of the public service and the burdens imposed upon registers and receivers are well described by Judge Love, of the United States district court of Iowa, in his opinion in the Babbitt case already referred to. He says:

The history of the land sales of 1855 will place the object of Congress in passing the sixth section (act of 1855) in a clear and definite light. The rage of speculation had, during that year nearly reached its height; multitudes of people besieged the land offices, clamorously demanding the location of their warrants. Many millions of acres of land were disposed of in Iowa in an incredibly short space of time. Under these circumstances it was manifest that no ordinary force of clerks and no ordinary means and appliances were sufficient to meet the exigencies of the service. The salaries of the officers were wholly inadequate to meet these expenses. Hence, Congress had either to provide the means of paying such expenditures out of the public Treasury, or of enabling the land officers to do it by authorizing them to receive fees adequate to that purpose from those for whose benefit the services were performed and the expenses incurred. Congress chose the alternative least burdensome to the public Treasury.

In cash sales the officer had but to count the gold and issue the certificate. In cash sales, one written application and one certificate were sufficient for a whole section. How different is it under the land warrant-system. In the location of warrants, the officers have to examine the assignments, oftentimes numerous and sometimes by guardians, &c., and pass upon their validity. This is often a delicate and responsible duty. A separate application and separate certificate have to be written for every warrant. With 160-acre warrants, four applications and four certificates were required for a section of land, and with 40-acre warrants sixteen applications and sixteen certificates were required for the same quantity of land. (Senate Report No. 176, second session, Forty-fifth Congress, case of T. A. Walker.)

There seems to be hardly any question about the propriety of reasonable allowances for the extraordinary expenses of these officers. The Commissioner of the General Land Office, in a letter to the Secretary of the Interior, under date of February 14, 1877, which is set forth in the Senate report above cited, says:

The following United States land offices were allowed for payment to clerks, rendered necessary in consequence of the magnitude of the sales of Osage and other Indian lands, the sums paid to them having been charged against the proceeds as expenses:

David B. Emmert, receiver at Humboldt, Kans.....	\$3, 145
William Q. Jenkins, register at Wichita, Kans.....	3, 207
M. W. Reynolds, receiver at Independence, Kans.....	2, 041

The act of Congress of 7th July, 1876, allowed Ariel K. Eaton, late receiver, and James D. Jenkins, former register, at Decorah and Osage, Iowa, \$3,600 each on account of payments for the services of clerks, upon the ground that such employment was necessary, owing to the large number of entries of land at that office.

By act of 18th February, 1861, section 2255 (Revised Statutes of the United States), the Secretary of the Interior is authorized to approve the employment for a limited period, and at a reasonable per diem compensation, of one or more clerks in the office

of a register of a consolidated land office, &c. ; but, with this exception, there is no direct authority of law for the employment of clerks at the expense of the United States in the offices of the registers and receivers of the United States district land offices.

In fact, the propriety of these allowances was recognized and authorized by Congress as early as the year A. D. 1856. By section 7 of the general appropriation act of that year, it was provided—

That in the settlement of accounts of registers and receivers of the public land offices the Secretary of the Interior be authorized to allow, subject to the approval of Congress, such reasonable compensation for additional clerical services and extraordinary expenses incident to said offices, as he shall think just and proper, and report to Congress all such cases of allowance at each succeeding session, with estimates of the sum or sums required to pay the same.

This rider seems to have been overlooked by the claimants, doubtless from the fact that they were relying upon their supposed right to retain the warrant charges. That question, decided favorably on the first instance, as we have seen, was not settled adversely by the Supreme Court until the year A. D. 1862, when the opinion in the Babbitt case was rendered. In the mean time, the act of February 18, 1861 (sec. 2255 Revised Statutes), had been adopted. This act applies in terms only to consolidated land offices, and appears to have been regarded as a repeal by implication of section 7 of the general appropriation act of 1856 ; at all events, that section seems to have been thenceforth ignored.

It may be proper to remark in this connection that the claimant Yeomans was absent from home for nearly four years, during the late war, as assistant surgeon of the Seventh Iowa Regiment ; that during his absence his residence was destroyed by fire, and, as he alleges, all his private papers were consumed, thus preventing him from confirming by original documents and writings much that is alleged in regard to the merits and history of these claims.

In the opinion of your committee, however, it would be, under these circumstances, obviously unjust to allow any suggestion of delay on the part of the claimants to prejudice their application for relief even at this day.

The claimant, Yeomans, has furnished to your committee numerous affidavits, letters, and statements by prominent business men and citizens of Iowa and other parts of the West, who were familiar with the condition of affairs at Sioux City during his term of office as register, all of which are herewith submitted. Among others, statements by the following well-known gentlemen : Hon. A. C. Dodge, James Harlan, George W. Jones, James H. Rothrock, W. A. Burleigh, George Wright, Charles Mason. From these statements and affidavits it fully appears that in 1856 the Sioux City land district was a vast region of uninhabited territory, embracing nearly one-fourth of the State of Iowa ; that the town itself was then a mere collection of log cabins out upon the verge of civilization ; that rents and all the necessities of life were extravagantly high ; that Yeomans was under the necessity of erecting a building at his own expense in order to secure proper office accommodations ; that he was compelled to bring the materials therefor and his mechanics to construct the same from Saint Louis, a distance of nearly one thousand miles. It further appears from the evidence submitted that the claimant Yeomans gave his personal attention strictly to the duties of his office ; that he kept continuously one competent clerk and additional clerks according to the exigencies of business, the number at times running as high as four.

The claimant, Leech, has also furnished numerous affidavits and statements, which are herewith submitted. From these proofs it appears that Leech gave his personal attention strictly to the duties of his office :



that he kept continuously one competent clerk; that at times the volume of business was such as to require the services of as many as four clerks. In short, it is the concurrent testimony of numerous gentlemen of all parties, and of the highest standing, that both these claimants ran their respective offices in the most thorough and business-like manner, and gave the highest degree of satisfaction to the public and the government.

There is no doubt, in the opinion of your committee, that both claimants, during their term of office, supposed themselves to be entitled under the law to the warrant charges; they most undoubtedly believed that such charges were intended to enable them to cover the extraordinary expenses of their offices, and it seems to be the unanimous opinion of the distinguished gentlemen making statements in favor of the claimants that, having been deprived of the warrant charges, they have never received adequate compensation for their many years of faithful service. In accordance with the decision of the Supreme Court, they were compelled to account for and pay these charges over to the Treasury.

Under the circumstances of the case, therefore, your committee is of the opinion that the claimants are entitled to be indemnified for the extraordinary expenses of their respective offices.

Your committee is of the opinion, from the evidence submitted, that the office expenses of said claimant, Yeomans, including rent and clerk hire, were somewhere from \$1,500 to \$2,000 per annum, and that a just indemnity to him for extraordinary expenses would be the sum of \$1,250 per annum, and in compensation for these disbursements your committee recommend that said claimant be allowed for the entire period of six years the sum of \$7,500.

Your committee is further of the opinion that the sum of \$900 per annum is a fair rate of compensation for the claimant Leech, as indemnity for the extraordinary expenses of his office, and your committee recommend that he be allowed the sum of \$4,050 on that account.

It further appears from the evidence submitted, that the claimant, Yeomans, in the winter of 1855-'56, was detailed by the Secretary of the Interior to examine charges against a receiver at Omaha, and the surveyor-general's office in Kansas, which service required a journey of some seven hundred miles in mid-winter in rude conveyances, and also the taking of many depositions. The details of these services are fully set forth in the affidavit of H. C. Bacon, herewith submitted. (See also the statement of the Hon. George W. Jones.)

The claimant, Yeomans, also alleges that soon after his appointment as register, the then receiver at Sioux City, a Mr. Bryant, was removed. That Bryant, upon his removal, and before the vacancy was filled, turned over the gold coin on hand to the claimant, Yeomans, who thereupon proceeded to Dubuque, a distance of three hundred and sixty miles across the State, and made deposit of the same.

The evidence shows that the actual expenses of the claimant while in Kansas upon the discharge of the duty thus assigned him were adjusted and paid; no allowances for services, however, were made in either instance, there being no law to meet such case. While these services on the part of the claimant, Yeomans, were undoubtedly meritorious, still your committee, in consideration of the fact that he was a government officer, in receipt of compensation, do not feel inclined to make any allowances therefor.

Your committee therefore report back the accompanying substitute for House bill 1110, and recommend its passage.



REBECCA NABORS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5681.]

*The Committee on Claims, to whom was referred the bill (H. R. 452) for the relief of Mrs. Rebecca Nabors, of Holly Springs, Miss., respectfully submit the following report:*

It appears, from the evidence presented to your committee, that Mrs. Nabors was postmistress at Holly Springs, Miss., on the 30th day of May, A. D. 1878; that she had theretofore held the office for several years and is still the incumbent thereof; that Holly Springs was visited by the yellow-fever epidemic in the last of May, 1878. The disease is reported to have appeared suddenly and to have spread with great rapidity; in fact, few people suspected danger before a large number were down with the disease. Among the first victims were the husband of Mrs. Nabors and Mr. Chenoworth, her son-in-law and assistant in the post-office; in a day or two thereafter Miss B. Nabors, her daughter, and also her assistant in the post-office, was attacked by the disease. Mrs. Nabors herself was the next victim. It seems the post-office remained closed for some days after Mrs. Nabors was taken sick. When reopened by a newly-appointed and inexperienced postmaster, *pro tempore*, the affairs of the office were found in great confusion, owing to the accumulation of mail-matter. The postmaster *pro tempore* could not procure an assistant, and before he could bring order out of the confusion in the office he sickened and died. Miss B. Nabors resumed her post at the office just so soon as her slow convalescence would permit, but in the meantime mail-matter had accumulated to a very large amount, and she, with all help possible to obtain, could not and did not straighten out the office accounts until after the epidemic had passed. It was then discovered that of the stamps, stamped envelopes, and postal-cards on hand in the office May 30, 1878, and received after that date, \$303 worth were missing, and for the disappearance of which no one connected with the office could account.

The foregoing statement of facts is confirmed by a memorial prepared at a joint meeting of the Howard Relief Committee and the Citizens' Committee of Holly Springs, held December 3, 1878. Said memorial concludes as follows:

Mrs. Nabors is not in the slightest fault. Our town was filled with strangers; our bank was closed, so that the government property could not be placed in it, and therefore it was exposed during the whole time. We do trust that this poor lady who now mourns the death of husband and both sons-in-law, her only supports, will not be ruined

by having to make good a government loss for which she is not responsible and against which she could not guard.

Trusting that the efforts we feel sure you will make may be crowned with success.

We are yours, respectfully,

ED. M. WATSON,  
LEWIS S. SCRUGGS,  
*Commissioners.*

The said memorial is also indorsed by the Hon. Van H. Manning, the Representative in Congress from that district.

It appears that Mrs. Nabors has kept her account good with the Post-Office Department.

Under the circumstances disclosed, your committee is of the opinion that the relief prayed for should be granted, and therefore report back the accompanying bill and recommend its passage as a substitute for bill H. R. 452.

JOSEPH L. STEVENS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 17.]

*The Committee on Claims, to whom was referred the bill (H. R. 17) for the relief of Joseph L. Stevens, postmaster at Manchester, N. H., submit the following report:*

The claim of said Joseph L. Stevens was presented to the last Congress and referred to the House and also the Senate Committee on Claims, by whom the matter was fully heard and investigated, and their conclusions and findings embodied in Senate Report No. 789 and House Report No. 33, third session of the Forty-fifth Congress.

Both committees unanimously recommended the passage of a bill allowing the claim. The Senate bill was duly passed by that body, but failed of passage in the House, being received so late in the session that it was not reached for action.

Mr. Stevens, the claimant, was appointed postmaster at Manchester, N. H., January 28, 1870, reappointed January 30, 1874, and again reappointed February 28, 1878, and still holds the office.

The post-office is located in Post-Office Block, on Hanover street, in said Manchester, in apartments leased by the government for that purpose, and the postage-stamps and other valuables pertaining to the office are kept in a safe provided for that purpose.

On the 16th day of May, A. D. 1878, the claimant deposited in one of the apartments of said safe four packages of postage-stamps of the aggregate value of \$4,785, and between said day and the 26th day of said June three of said packages were abstracted from said safe, containing stamps of the following amounts and denominations, to wit:

One package of 50,000 3-cent stamps .....	\$1,500
One package of 40,000 3-cent stamps .....	1,200
One package of 20,000 2-cent stamps .....	400
One package of 2,000 6-cent stamps .....	120
One package of 650 10-cent stamps .....	65
Making a total of .....	3,285

Your committee find that the theft was committed without any apparent fault or negligence on the part of said claimant or any of his employes; that he seems to have taken all reasonable care of the same, and the same that he took of his own property; and the character of the claimant, and of his subordinates who had access to the safe, for honesty and integrity, as shown to your committee by the testimony of the most prominent citizens of said city, of both political parties, is such as to preclude all suspicion of any complicity in the theft on their part.

The Post-Office Department was notified of the loss as soon as the

theft was discovered, and the claimant took the most prompt and vigorous measures to discover the thief and reclaim the stolen property, and incurred very considerable expense in the employment of detectives and otherwise, but without success.

The special agent of the Post-Office Department who was assigned to that duty made a thorough investigation of the loss and submitted his report, now on file in the Post-Office Department, of which the following is a copy:

BOSTON, MASS., *February 8, 1878.*

SIR: I have the honor to return case No. 2107 B, and to inform you that I have made personal investigation and search relating to the loss of postage-stamps from the Manchester, N. H., post-office.

I found that the postmaster, J. L. Stevens, took account of the number of his stamps that were kept in the safe in the office June 16, and at that time the amount was correct. On June 26, when he again made an examination, he found that two original packages and parts of broken packages, amounting in the total to \$3.25, viz:

200 sheets, two-cent stamps.....	\$400 (u)
900 sheets, three-cent stamps.....	2,700 (u)
20 sheets, six-cent stamps.....	120 (u)
6½ sheets, ten-cent stamps.....	65 (u)

were missing. He at once commenced a thorough search for the same, but failed to find any trace. The postage-stamps were kept by him in the safe at the office, the safe being kept open during office hours. Besides the stamps, there were kept in the safe money-order funds, post-office money, and his private funds. Nothing but the stamps was molested. At no time between the 16th and the 26th of June (at which later time he discovered his loss) was the safe without a large sum of money in the same, and yet no money was taken. The safe was located in the office, about 2½ feet from the office window, where the clerks at all times are employed, and about 15 feet from the rear door. During the warm weather this door was left open, and at a part of the day (6 to 7 p. m.) there was at times but one clerk on duty, and at no other time of the day, or when the office was open, would there be less than four of the employes present.

The only theory as to the loss arrived at was, that during the time there was only one clerk in the office, his attention being called to the window for stamp or money-order, and back being turned to the safe, some one came into the office through the rear door, stepped to the safe and stole the packages. As ten days had passed between the time of Mr. Stevens knowing his amount of stamps in the safe and the discovery of his loss, we found it impossible to arrive at any conclusion who the depredator was. Every effort has been made by Mr. Stevens and myself to find some clew to the loss. He has employed private detectives and devoted his own time in following every trace and studying every theory, but without success.

Mr. Stevens has held the office of postmaster for the last eight years, and has the best of records; is an industrious and energetic man, always at his post, and this is the only serious trouble that has occurred at his office during his term. From the thorough investigation made by me, and after a close study of all the facts relating to this loss, I am satisfied that he gave the same care to the department's property entrusted to him that he did to his own, as there was no time but what there was his personal funds and funds belonging to the money-order department in the safe.

In summing up I can only add that, after a most thorough search and investigation, no trace of the stamps or depredators could be found.

Very respectfully,

CHARLES FIELD.

*Special Agent Post-Office Department.*

DAVID B. PARKER,

*Chief Special Agent Post-Office Department, Washington, D. C.*

Upon the evidence as presented your committee are of the opinion that Mr. Stevens has been made the victim of some very adroit operator; and while the manner in which the stamps were, in fact, abstracted must remain a matter of speculation, still your committee are of the opinion that the circumstances disclosed are of such a character as to amply justify the government in granting to Mr. Stevens the relief prayed as a matter of grace.

Your committee, therefore, recommend the passage of the accompanying bill.

J. J. LINTS.

APRIL 7, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BARBER, from the Committee on Claims, submitted the following

## REPORT:

[To accompany bill H. R. 532.]

*The Committee on Claims, having had under consideration the bill (H. R. 532) for the relief of J. J. Lints, beg leave to submit the following report thereon:*

It appears from the evidence presented to your committee that the claimant, Lints, was custodian of public property at the United States Harbor, at Erie, Pa., by order of the War Department, from April 8, 1857, to September 10, A. D. 1859, at a compensation of \$2 per day. For these services the claimant rendered two bills to the government, one covering the period from April 8, 1857, to December 16, 1858, inclusive, amounting to \$1,236, and the other covering the period from December 16, 1858, to September 10, 1859, amounting to \$538, less a small credit of \$77.10, making a total of \$1,696.90. Neither of these bills has ever been paid, although frequent reports have been made in favor of the claimant, viz: Senate Report No. 83, first session Thirty-sixth Congress; H. R. Report No. 574, first session Thirty-sixth Congress; H. R. Report No. 76, second session Thirty-seventh Congress; H. R. Report No. 5, second session Thirty-eighth Congress.

A bill for the relief of Mr. Lints passed the House at the second session of the Thirty-seventh Congress. (See Globe, vol. 48, part 3, page 2714.) This bill was rejected in the Senate (Globe, vol. 47, pt. 2, third session, page 1523). The rejection seems to have been due to a misapprehension as to the period during which claimant acted as custodian and the absence of a report.

There seems, however, to be no question about the rendition of the services or as to the amount due claimant at the rate of compensation aforesaid. The only question seems to be whether the claimant should be charged with certain property lost by theft or carried away by storms during the period of his service. There seems to have been a very considerable loss or shrinkage of government property, which was supposed to be in the care and custody of the claimant, whether by theft or storms does not clearly appear.

Your committee, however, find no evidence upon which to doubt the fidelity of the claimant or impute want of care or vigilance. The property was mainly timber of a bulky character, widely scattered upon the lake shore for a distance of some two miles or more, and peculiarly exposed to loss by storms or depredations from reckless or irresponsible parties. The claimant was the only person employed to look after the

same, and it was manifestly beyond his power to secure absolute safety for the same.

It seems, however, that Lieutenant-Colonel Graham, superintending engineer, was inclined to hold the claimant to a strict accountability and to leave the adjustment of any equities to higher authority. In this connection it is proper to call attention to the following letter upon this subject from Col. J. J. Abert, of the Engineer Corps :

BUREAU OF TOPOGRAPHICAL ENGINEERS.

Washington, March 26, 1860.

SIR: In answer to the application of the Hon. E. Babbitt, of the House of Representatives, for information in relation to the claim of J. J. Lints, for services as custodian of public property at Erie, Pa., I have the honor of transmitting herewith copies of reports from Lieutenant-Colonel Graham, dated December 28, 1858, and February 11, 1860; the first inclosing an account from J. J. Lints for his services as custodian of public property at Erie from 8th April, 1857, to December 16, 1858, and the latter inclosing a similar account for his services from 16th December, 1858, to September 10, 1859, with a copy of a report from this office of 7th February, 1859, in answer to a letter from the Hon. A. Iverson, chairman of the Committee on Claims of the Senate, inclosing the memorial of Mr. Lints asking compensation for his services.

It will be seen from the report of Lieutenant-Colonel Graham, of December 8, 1858, that Mr. Lints is held accountable for certain timber not accounted for, which at its cost would amount to \$815.14, and if exacted, would leave the amount due to him at that time \$420.86. Although Mr. Lints may be held accountable for the deficient timber, it would perhaps be doing him injustice to make him pay cost for it, as it is no doubt greatly depreciated in value since the suspension of operations at the harbor, and it is considered that one-half only of the amount for which he is held accountable should be charged to him, which would leave the amount due him at that time \$228.43.

The subsequent account of Mr. Lints for services from December, 1858, to 10th September, 1859, shows that there was due him for services during this period \$407.57. It would therefore appear that the amount due to Mr. Lints, according to the views of this office, is as follows, viz,

Amount due him for services to December 16, 1858.....	\$228.43
Services from December 16 to September 10, 1859.....	407.57
	<hr/> 1,299.00

If, according to the views of Lieutenant-Colonel Graham, Mr. Lints should be held accountable for the deficient timber at its cost, this amount would be reduced by the sum of \$407.57, which would leave as the amount due to Mr. Lints \$881.76.

Respectfully, sir, your obedient servant,

J. J. ABERT.

Colonel Corps Topographical Engineers

Hon. JOHN B. FLOYD,  
Secretary of War.

It will be borne in mind that the sum total of claimant's demand for the services in question was \$1,696.90—the correctness of which is not questioned. If, therefore, he be charged the cost price of the shrinkage or loss, viz, \$815.14, in accordance with the action of Lieutenant-Colonel Graham, the balance due him would be the sum of \$881.76. On the other hand, if he be charged with only one-half of that sum, in accordance with the suggestion of Colonel Abert, the amount due him would be \$1,289.33.

Your committee are of the opinion that the better adjustment would be to allow the claimant the sum of \$1,000, in round numbers, for his services.

Your committee therefore recommend that said bill be amended by striking out the amount named therein and inserting the sum of \$1,000 in lieu thereof, and that the same, when so amended, be passed.



WILLIAM F. LEAGUE.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 686.]

*The Committee on Claims, to whom was referred bill H. R. 686, have had the same under consideration, and report as follows thereon :*

William F. League in 1866 was assessed an internal-revenue tax on brandy, which he had distilled at Estell Springs, in Tennessee, the tax thereon being \$127.50, which the claimant insists was an erroneous and improper tax for the following reasons:

At the time of the assessments spirits were permitted to be moved from the place of manufacture before the tax was paid, and the spirits—brandy—manufactured by the claimant upon which the above tax was assessed was stored in the claimant's storehouse, and all the contents, including the brandy, were destroyed by fire, and the brandy manufactured by the claimant which was so destroyed did not in any way benefit the petitioner or any other person.

It is satisfactorily proven that the said brandy was destroyed by fire and was of no advantage to anybody, and that the same was consumed by fire with the warehouse and all the contents of the building; that the fire was occasioned by a passing locomotive, and the whole building was in flames before anybody arrived upon the scene of the conflagration; and your committee are of opinion that there is no just reason why the said claimant should not have relief, and they therefore report back the bill and recommend its passage.

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WARREN K. CHURCHILL.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2818.]

*The Committee on Claims, to whom was referred the bill (H. R. 2818) for the relief of Warren K. Churchill, postmaster at Elmwood, Plymouth County, Mass., reports as follows:*

That early on the morning of the 23d day of May, A. D. 1878, his store, in which is located the post-office, was forcibly entered and the safe removed therefrom by some person or persons to him unknown, carried into an adjacent vacant lot of land, there broken open and the entire money contents carried away. That he was accustomed to keep in said safe, as well his own private funds, as the funds belonging to the post-office. That at the time of the robbery of his safe on said 23d day of May, A. D. 1878, there was in the safe the sum of \$38 belonging to the post-office, besides money of his own, and that both his funds and those of the post-office were carried away by the burglars. That on the 1st of the following July, your petitioner, upon making up his quarterly returns, paid from his own private funds the sum of \$38, in order that there might be no deficit in his accounts.

And your committee believing the claimant to be in justice and equity entitled to the relief prayed for, they recommend the passage of the bill.



JAMES M. WILBUR.

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APRIL 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4670.]

*Mr. O'Connor, from the Committee on Claims, to whom was referred the bill (H. R. 4670) for the relief of J. M. Wilbur, have had the same under consideration, and respectfully report thereon as follows:*

The facts as made out before your committee, by evidence chiefly of a documentary character, may be stated briefly in the following order:

1. That the United States, on the 8th day of September, 1874, entered into a contract with Bartlett, Robbins & Co., of Baltimore, for furnishing, delivering, fitting, and putting in place all the wrought and cast iron work for the United States court-house and post-office building in New York City, which contract included the furnishing and putting in the illuminated tiling used in and about said building.

2. That the claimant, James M. Wilbur, subsequently entered into a contract with Bartlett, Robbins & Co., contractors with the government, to furnish and put in the illuminated tiling for said building.

3. That the said Wilbur was the patentee of the illuminated tiling which was put into said building, and that samples of said patented tiling were accepted and approved by the Supervising Architect.

4. That said Wilbur commenced work on his contract on or about the 20th day of August, 1874, under the direction of William G. Steinmetz, assistant superintendent of construction on the part of the United States. That soon thereafter it was discovered by the said superintendent that the illuminated tile called for by the original contract was not of sufficient weight, thickness, and strength for the purposes intended. That thereupon the claimant was instructed to change the work from the directions given in the specifications so as to furnish and put in tiling of greater weight, thickness, and strength than was called for by the original contract, which he did under the directions of the superintendent aforesaid.

5. That said tiling was therefore put in according to certain samples then adopted, which were submitted to your committee, and not according to the agreement contained in the original contract, which change was beneficial to the government and greatly increased the work, cost, &c., of the contractor.

6. That it appears from the evidence that the weight per square foot of the samples which were accepted by the government under the original contract was as follows:

Court-yard roof, 13½ per square foot.

Sidewalks,  $20\frac{1}{2}$  per square foot.

Raised platforms,  $20\frac{1}{2}$  per square foot.

Risers,  $13\frac{1}{2}$  per square foot.

Post-office floor,  $13\frac{1}{2}$  per square foot.

That the weight per square foot of the work actually put in was—

Court-yard roof,  $22\frac{5}{8}$  per square foot.

Sidewalks,  $29\frac{7}{8}$  per square foot.

Raised platforms,  $29\frac{7}{8}$  per square foot.

Risers,  $22\frac{5}{8}$  per square foot.

Post-office floor,  $38\frac{7}{8}$  per square foot.

And that the excess of material used over and above the original contract for each part of the work, together with additional costs thereof, is as follows:

Court-yard roof:

Iron, 32,541 lbs.; glass, 2,491.72 lbs.;  $35,032\frac{1}{2}$  lbs. =  $2,594\frac{2}{10}$  ft. @ 88c. = \$2,282.98.

Circular lights:

Iron, 2,158 $\frac{7}{8}$ ; glass, 610;  $2,767\frac{7}{8}$  lbs. = 135 ft. @ \$4.50 = \$608.63.

Raised platforms:

Iron, 5,387; glass,  $1,518\frac{5}{8}$ ; 6,906 =  $336\frac{2}{10}$  ft. @ \$4.50 = \$1,716.05.

Risers:

Iron, 2,040; glass, 150; 2,190 =  $162\frac{3}{8}$  ft. @ \$4.50 = \$731.40.

Sidewalks:

Iron, 16,617 $\frac{2}{10}$ ; glass, 4,690;  $21,307\frac{2}{10}$  =  $1,039\frac{1}{8}$  ft. @ \$4.50 = \$4,675.50.

Post-office floor:

Iron, 66,872 $\frac{7}{8}$ ; glass, 28,059;  $94,931\frac{7}{8}$  = 7,043 ft. @ \$4.25 = \$29,932.75.

Bolts, screws, &c.:

4,992 lbs. =  $1,327\frac{1}{10}$  ft. @ \$4.25 = \$5,640.18.

Total amount due, \$47,159.02.

7. That at the time such change was made in the said tiling, it was agreed between W. G. Steinmetz, the superintendent of construction of said building, that the said Wilbur should be paid therefor on the basis of the amount agreed to be paid by the government for the said work under the original contract and in proportion to the increased weight of material.

8. That said work was completed to the satisfaction of the government, and has been accepted by the government and is now in use in said building.

9. That said Wilbur has received no compensation for said excess of work and material; that he has presented his claim to the proper department of the government, and that the same has been referred to Congress for its action thereon, for the reason that there is no appropriation available to pay this claim.

10. That Bartlett, Robbins & Co. have settled with the government for work, &c., done under their contract, and have released all claim against the government for the excess of work for which this claim is made.

Accompanying this report is the testimony which has been adduced before your committee, with such correspondence as passed with the Department of the Treasury upon this subject.

Upon a careful consideration and review of all the evidence, your committee are of the opinion that Wilbur, the claimant, is entitled to receive pay of the government for the amount of excess of material which he put into the work, and of which the government is now enjoying the benefit, which excess amounts in value to \$47,159.92, and your committee recommend that the said Wilbur be allowed the sum, and report back the bill to the House with the recommendation that it do pass.

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RACHEL MARTIN.

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APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 2793.]

*The Committee on Claims, to whom was referred the petition of Rachel Martin, asking relief, with bill H. R. 2793, have had the same under consideration, and report as follows :*

On the 31st day of May, 1879, Rachel Martin, who was then post-mistress at New Castle, Craig County, Virginia, duly registered at said post-office the sum of \$34.25 in money, addressed to the Third Assistant Postmaster-General at Washington, D. C., and placed the same in the United States mail, said amount being due by her on her general postal account; that said amount was mailed to the Third Assistant Postmaster-General, Washington, D. C., instead of to the Treasurer of the United States, Washington, D. C.; that the said amount was stolen from the registered package in the mail by William E. Cundiff, the United States mail-carrier on the route from New Castle to Salem, Va.; that said Cundiff was arraigned, plead guilty to the indictment of the larceny of said \$34.25 in the United States district court at Lynchburg, Va., and sentenced to the United States penitentiary at Albany, N. Y. These facts have been substantiated, as will appear by letter of Thomas P. Shallockross, special agent Post-Office Department, which accompanies the petition.

Your committee do not think that the petitioner, a worthy person and faithful officer, should suffer simply for the mistake in directing the money to the Post-Office Department instead of to the Treasurer of the United States, and they believe she is entitled to the relief prayed for, and recommend the passage of the bill.

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LYNCHBURG, VA., September 18, 1879.

MADAM: William E. Cundiff, late mail-carrier between your office and Salem, Roanoke County, Virginia, being indicted for stealing from the mail on the 31st May, 1879, "the registered letter" mailed by you on that date, addressed to "the Third Assistant Postmaster-General," by mistake, the same inclosing \$34.25, being the amount due by you on your general postal account, March 31, 1879, was arraigned before the United States district court this morning, and plead guilty to said indictment.

The Post-Office Department, having ruled that a credit cannot be allowed you for the \$34.25, inasmuch as you addressed the registered letter inclosing the same to the "Third Assistant Postmaster-General" instead of addressing it to "the Treasurer of the United States," it will be necessary for you, through the member of Congress representing your district, to seek relief by special act of Congress. I presume you will

## RACHEL MARTIN.

have no difficulty in getting your member of Congress to present the case in proper form at the next session. In the meantime I would suggest that you ask some friend in your town to prepare a memorial, setting forth all the facts in the case, and send that to your member of Congress to carry with him to Washington. I will take pleasure in aiding to have the measure of relief passed, if advised as to who may have the matter in charge. My address is room 28, Post-Office Department, Washington, D. C.

I have the honor to be, respectfully,

THOS. P. SHALLCROSS,  
*Special Agent, Post-Office Department.*

Mrs. RACHEL MARTIN,  
*Postmaster, New Castle, Va.*

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TOLLEY & EATON.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT: .

[To accompany bill H. R. 685.]

*The Committee on Claims, to whom was referred the bill (H. R. 685) for the relief of Tolley & Eaton, of Lynchburg, Moore County, Tenn., having had the same under consideration, beg leave to report:*

The bill authorizes and directs the Commissioner of Internal Revenue to release Messrs. Tolley & Eaton, of Lynchburg, Moore County, Tenn., from the payment of a tax amounting to \$1,047.88, assessed on 1,164.31 gallons of whisky, "the same being the quantity they fell short of producing on their surveyed capacity during the month of April, 1878."

It appears that in the month mentioned the claimants, who are distillers, commenced operations with a new distillery and new machinery, run for the first time by steam. The latter proved defective in various ways, and to such an extent that their operations were practically suspended. The claimants, as well as their employés, exerted themselves in every possible way to remedy these mishaps; but they had great difficulty in procuring materials for repairs, as the nearest point at which they could be obtained was the city of Nashville, a distance of 75 miles. Owing to these causes they fell short of producing the quantity of spirits required under their surveyed capacity, 1,164.31 gallons, on which the tax complained of was assessed. The evidence submitted is very strong and conclusive on these points.

L. D. Barnes, storekeeper and gauger, certifies that Messrs. Tolley & Eaton, as well as their employés, did all that could be done to reach the surveyed capacity, and that they were in no way to blame for the failure, which was attributable to defective machinery.

E. P. Reynolds, deputy collector, and S. J. Book, United States storekeeper, certify to the same facts, and, besides, bear testimony to Messrs. Tolley & Eaton's good character, and their uniform willingness to comply with all internal-revenue laws and regulations.

G. Hanning, internal-revenue officer, certifies that the deficiency was unavoidable; that Tolley & Eaton did everything in their power to adjust the machinery properly and make it perform the proper functions, but it was "a physical impossibility" to do so. He also bears witness to the good character of Messrs. Tolley & Eaton, and their ready compliance at all times with internal-revenue laws and regulations.

W. M. Woodcock, collector of internal revenue for that district, expresses his belief in all the statements mentioned, and strongly recommends that the assessment be not made.

In view of these facts, your committee think that Messrs. Tolley & Eaton are clearly entitled to the relief asked. For the government to collect this amount, assessed on whisky which they were unable to make, on account of mishaps which could neither be foreseen nor avoided, would not only be a great hardship, but an absolute act of injustice, and place it in the attitude of taxing the misfortunes of its citizens.

The Commissioner of Internal Revenue has no discretion in the matter, and the claimants are forced to appeal to Congress for relief.

We report back the bill with the recommendation that it do pass.



W. B. HOMER.

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APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

## REPORT :

[To accompany bill H. R. 3112.]

*The Committee on Claims, to whom was referred bill H. R. 3112, have had the same under consideration and report thereon as follows :*

The bill is accompanied by a petition, and the facts are plainly these On the night of November 30, 1879, the set of government quarters occupied by Second-Lieut. W. B. Homer, Fifth Artillery, U. S. A., at the military post at Fort Barrancas, Fla., was, during his absence, entirely consumed by fire, owing to no fault or negligence of his own. The night was windy, the building of southern pine, imperfectly built, and the apparatus of fire extinguishers was inadequate. Said fire destroyed nearly all the personal property of Lieut. W. B. Homer, which has been set forth and described in lists marked Exhibits A and B, appended to his petition. Nothing belonging to him was saved but a few bulky articles, and they were all more or less damaged by fire, heat, or water charged with carbolic acid, issuing from the extinguishers. The petitioner states, and your committee find it to be so, that he is especially unable to stand this loss which, in the duration of a few hours, deprived him of his uniform, clothing, and other necessities of daily wear, which he is unable to replace without depriving himself and his mother and two sisters, who are left solely dependent upon him by his father's sudden death four years ago.

An inquiry into the cause and effects of the fire was held by a board of officers, convened for that purpose, on the 1st of December, 1879, and the proceedings of the said board, duly certified, with the evidence before them taken, is appended to and made part of his petition. From the evidence it appears that the fire arose from a defect in the chimney, and during the absence for cause of Lieutenant Homer. The appraised value of the articles lost, consisting of uniform and wearing apparel principally, amount to the sum of \$409.50. The loss sustained by Lieutenant Homer, your committee have found, falls with peculiar hardship upon him, and your committee think that under the circumstances which have been related by Lieutenant Homer, a brave, gallant, and deserving officer, his appeal to Congress to be indemnified for his loss, should be favorably considered. Your committee have not been at a loss to find precedents to sustain them in their recommendation of his claim. The cases of Lieutenants Verplanck and Burbank, who were indemnified by Congress for losses sustained by them by a fire at Fort Hamilton in New York Harbor, are in point. The sensitiveness of a brave man

would have made this officer forbear from presenting any claim for his indemnity but for the fact that the loss involves the greater suffering of those who are helpless and dependent upon him; and as the origin of the fire has been traced to a defect in the chimney of the building assigned by the government as his quarters, your committee think that it is but fair and just to grant the relief which has been prayed for, and they recommend the passage of the bill.

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ROBERT CHISOLM.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3592.]

*The Committee on Claims, to whom was referred the bill (H. R. 3592) for the relief of Robert Chisolm, Charleston, S. C., have had the same under consideration, and report as follows thereon:*

It has been shown by the evidence produced before your committee that Robert Chisolm, of Beaufort, in the State of South Carolina, a planter by profession, and a natural-born citizen of the United States, on 6th of February, 1851, purchased of Edward Fripp, executor of Perry Fripp, two lots in the town of Beaufort and State aforesaid, each 60 feet front by 120 feet deep, bounded north by Port Republic street, south by Bay street, east by a lane, and west by lots Nos. 4 and 29; said lots being known as Nos. 5 and 30 on a plan annexed to a petition addressed by claimant to Hon. William A. Richardson, Secretary of the Treasury, through J. W. Douglass, esq., Commissioner of Internal Revenue of the United States, on the 10th day of December, 1873, and which petition, with the accompanying documents, are referred to as part of this report.

It further appears that on the 31st of May, 1852, claimant purchased of Anne C. Forbes lot No. 4 on plan just hereinbefore referred to, adjoining above lots and bounded north by lot No. 29, east by lot No. 5, south by Bay street, and west by lot No. 3, said lot being in the town of Beaufort, State of South Carolina, and measuring 60 feet front by 120 feet deep.

It further appears that on the 20th day of May, 1857, claimant purchased also of the said Anne C. Forbes the lot marked A on plan hereinbefore referred to, measuring 60 feet front on Bay street and extending thence southward to the Port Royal River.

It further appears that for lots Nos. 5 and 30, as hereinbefore mentioned, claimant paid \$3,000, for lot No. 4 \$600, for lot A \$1,500, and received good titles for each several purchase; which said titles were duly recorded in the register of mesne conveyances' office of Beaufort district, the originals of which are in the possession of claimant.

It further appears that the records of the office of register of mesne conveyances for Beaufort district, South Carolina, were burned during the late war in the city of Columbia, State aforesaid.

Claimant remained in quiet possession of his several purchases above set forth until the 13th day of March, 1863, when, under an act of Congress passed the 17th day of June, 1862, the said lots were offered for

sale in two parcels, and bid in at the said sale by the government, for lot A, block 71, \$70, and for lot C, block 72, \$120.

It further appears that for the purposes of said sale, said lots were resurveyed by the commissioners of direct-tax sales for the district of South Carolina, and are now known and described upon the plat of said lands in the town of Beaufort as lot A, block 71, and lot C, block 72.

It further appears that on the 28th day of March, 1865, lot A, block 71, was resold for \$1,730, and lot C, block 72, for \$1,300; that the tax, penalty, interest, and cost charged upon the books of the government against lot A, block 71, amount to \$66.71, leaving a difference between the amount for which this lot sold and the charges due the government of \$1,663.29, which amount is now covered in the Treasury.

That lot C, block 72, on the same day and year hereinbefore stated, was resold for \$1,300, and the amount of tax, penalty, interest, and cost charged upon the books of the government against this lot amount to \$13.34, showing a difference covered in the Treasury, in excess of what was due the government, of \$1,286.66. The total difference between the sums which the said two lots brought at the resale and the costs, charges, taxes, and penalties charged against them amount to \$2,949.95.

This sum your committee are of the opinion, after a thorough investigation and an examination of all the points bearing upon the case, should be held and treated as a trust fund in the Treasury of the government, to be returned to the lawful owner of the property from the sales of which this sum proceeded. The government had no claim upon the property other than the tax, penalty, interest, and cost charged up to the day of sale; all over and above that should inure to the benefit of the owner. The direct-tax act, under which the sales were made, was not designed to be penal in its effects and consequences, but as an aid or means by which the government could enforce the collection of its dues or the obligations of its citizens to the government. For the government to retain this money, which properly belongs to the former owner, would be most inequitable and unjust, and no sanction for such retention under the circumstances can be found in any code upon the civilized globe. Your committee think that the claimant is entitled to have paid to him out of the Treasury whatever amount remains in the Treasury from the proceeds of said sales; and inasmuch as your committee have received from the Commissioner of Internal Revenue a return showing the total amount of difference between the receipts from the sales of these two lots and the tax, penalty, interest, and cost which were charged against them and deducted to be \$2,949.95, your committee are of opinion that claimant is entitled to have this amount restored to him; and they recommend that the bill be amended by striking out "thirty" and inserting so that it shall read "2,949.95," and thus amended that it do pass.

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DANIEL PARKER.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 684.]

*The Committee on Claims, to whom was referred the bill (H. R. 684) for the relief of Daniel Parker, have had the same under consideration, and report as follows:*

The facts in this case are briefly as follows:

In 1873, Natt G. Terry was a distiller in the county of Bedford, in the State of Tennessee; that said claimant, Daniel Parker, and Robert H. Terry were the sureties of said Natt G. Terry on his distiller's bond; that said distiller failed to pay the assessments made on him in 1873 and 1874; that said distiller was unable to attend to his business in consequence of a wound received in one of his feet, and for such reason and others not mentioned the said Natt G. Terry failed to pay his assessments made against his business of distilling; that the said Natt G. Terry and his surety, Robert H. Terry, were responsible financially a long time after said assessments were made, but the same remained unpaid and uncollected by the government for years and until 1877, during all of which time the same could have been made from said distiller.

The government collector allowed the said Natt G. Terry to dispose of some 200 barrels of spirits long after said assessments were due and unpaid, which might have been held and the assessments due the United States collected therefrom, which said 200 barrels of spirits were in bonded warehouse when said distiller was allowed to dispose of the same, and was worth \$4,000 above the taxes thereon, though an assessment of \$474.32 which the bill in this case provides for refunding to said claimant was long before said sales due from said distiller to the government, and after being so due, the United States, through its collection officers, received large sums of money from said distiller on future assessments, and neglected to apply said moneys on the oldest claims, and allowed the said distiller to take and dispose of said 200 barrels of spirits, not collecting when it might from said distiller the said assessment, the amount of which is as above stated.

That said distiller and said Robert H. Terry have since 1877 failed, and the claimant paid over to the United States the sum of \$474.32, the amount of said assessment unpaid by said distiller and uncollected of said distiller or of the other surety, when they were responsible and able to pay as above stated; that said Parker paid said claim under protest to save costs and expense of United States courts, &c., and he

now comes to Congress and asks that said tax so paid by him be refunded to him by the government as a matter of justice and equity.

Your committee are of opinion that the government ought as a matter of justice to hold itself responsible for such laches of its agents, as appears to have resulted in its failure to collect said assessment from said Natt G. Terry, and therefore said sum mentioned in said bill should be refunded to said Daniel Parker, and so report the bill back, and recommend its passage.

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THOMAS DOAK.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1705.]

*The Committee on Claims, to whom were referred the petition of Thomas Doak and the bill H. R. 1705, have had the same under consideration, and report:*

On the 28th of August, 1877, the post-office at Cameron, Mo., whereof Thomas Doak was postmaster, was forcibly broken into and robbed; the iron safe, in which the postmaster kept his funds, entered by the thieves, who carried away money-order funds amounting to \$379.32; postal funds, \$81.37; mail key No. 1914, belonging to the local mail agent, and two registered packages, No. 50, Cameron to Clayville, N. C., contents 834 stamps, and No. 214, Saint Joe to Cameron, and gold chain, value \$10.50. The thieves also carried away a lot of postage-stamps, which were afterwards found on the prairie, about 150 yards from the post-office; all of which fully appears by reference to the report of Warren P. Edgerton, special agent Post-Office Department, which accompanies the petition, and other papers in the case. The petitioner has been exonerated from all blame by the Post-Office Department, and our committee, believing him entitled to the relief prayed for, recommend the passage of the bill.



THOMAS A. McLAUGHLIN.

APRIL 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 242.]

The Committee on Claims, to whom was referred the bill (H. R. 242) for the relief of Thomas A. McLaughlin, beg leave to report that they have considered the same, and find that said bill provides for the payment of the sum of \$1,149.25 for extra work done in the construction of the central gate-house in the distributing reservoir, Washington Aqueduct, and for loss of materials occasioned by turning the water into said reservoir before the completion of said gate-house. Said McLaughlin claims for work done and for materials lost as follows:

for 45½ cubic yards of masonry, for which he was not allowed by reason of mistake in measurement, at \$14.90 per cubic yard.....	\$675 25
or 100 loads of sand, at \$1 per load.....	100 00
or 12 barrels of cement, at \$2.....	24 00
or ditching, bailing water, filling in back of masonry, clearing off mud, and repairing damages caused by filling reservoir with water.....	200 00
or loss of labor and material on account of change of plan.....	150 00
Total .....	1,149 25

As to the first item in the account, for 45½ cubic yards of stone masonry, for which claimant was not allowed payment by reason, as he alleges, of mistake in the measurement of the work done by him, the claimant swears that after he had undertaken to do said work it was found that the excavation had to be enlarged, and that the masonry was consequently increased. And he states under oath that he placed in said work 779¾ cubic yards of masonry, and that he was only allowed payment for 734⅞, being 45⅝ cubic yards less than the amount actually placed in said work.

John C. Harkness, who testifies that for many years he has been a builder and architect and a measurer of builders' work, and has had large experience as such, swears that for thirteen years he was in the employment of the United States as a measurer of work in public buildings, chiefly in connection with the construction of the Patent Office and Capitol extension, having measured the granite, brick, marble, carpenters' and plasterers' work of the east and west wings and north front of the former, and the stone foundations, marble and granite work, of the Capitol extension; and that in the month of April, 1873, he examined and measured the work done by said claimant on the central gate-way of the distributing reservoir of the Washington Aqueduct; that he took all the pains necessary to make a careful examination as to the manner in which the work was done, and to make an accurate measurement thereof, and that he did measure it with exactness; and from his meas-

urement, the figures of which he appends to his affidavit, he makes the number of cubic yards 779 $\frac{3}{4}$ .

William Henderson swears that the measurement of said John C. Harkness was made from actual measurement of the work after the completion of the same; and that to the best of his knowledge and belief said measurement is correct. He also swears that he measured the work himself, and carefully examined the measurement and figures of said Harkness, and that he had been accustomed to measure masonry.

Mr. Samo, the assistant engineer of the aqueduct, says he measured the work as built, and thinks his measurement of 734 $\frac{1}{16}$  cubic yards is correct; but the testimony seems to show very clearly that there were 779 $\frac{3}{4}$  cubic yards of stone masonry placed in the work.

And the committee are satisfied from the evidence that there was a mistake made in the measurement, and that said claimant should be allowed and paid for 45 $\frac{1}{4}$  cubic yards more than he was paid for, which at the contract price, amounts to \$674.22.

The committee are also of the opinion that the item of \$150 for labor and loss of material on account of change of plan in a part of the work should be justly allowed.

The testimony of Michael Cavanaugh, of the said William Henderson, and of the claimant himself clearly shows that the change was made and properly made, and that the said sum of \$150 is no more than a just and reasonable sum.

The items of \$100 for 100 loads of sand, \$24 for 12 barrels of cement, and \$200 for ditching and bailing water, filling in back of masonry, cleaning off mud, and repairing damages caused by filling reservoir with water, the committee are of the opinion should not be allowed. These items are all for damages done by turning the water into the reservoir; and claimant complains that he did not have sufficient notice that the water was to be turned in; that he was only notified that the water was to be turned in to test the iron pipes used for conducting the water in the reservoir to the gate-house late in the morning of the day on which they proposed to do so, and that he had not time to take care of the dressed stone, timber, cement, and sand lying on the banks. But the committee think that if he had not sufficient time to take care of and remove his property, so as to prevent loss and damage, he should have given notice of the fact and taken some steps to have the turning in of the water postponed until he could have removed the property destroyed. But it does not appear that he took any steps of that kind, and the committee are of the opinion that the claimant is not free from fault himself, and that he should not therefore be allowed for said damages.

It appears from a letter of the Chief of Engineers to said claimant that he acknowledged that claimant should be allowed for the labor and loss of material growing out of the change of plan aforesaid; and the committee are of the opinion that for this and the mistake made in the measurement of the stone masonry, which, from all the testimony, was done in a most excellent and satisfactory manner, the said claimant should be allowed the sum of \$824.22, and they therefore report back the bill and recommend its passage.

PHILEMON B. HAWKINS.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee of Claims, submitted the following

REPORT:

[To accompany bill H. R. 375.]

*The Committee of Claims, to whom was referred bill H. R. 375, have had the same under consideration, and respectfully report:*

On the 15th of May, 1874, Philemon B. Hawkins entered into a contract with the United States, whereby he agreed to furnish 1,000 cubic yards (more or less) of rubble-stone for the United States, at Raleigh, N. C., for the court-house and post-office building in said city, for the sum of \$5 per cubic yard. Said stone was to be equal to a sample submitted by the petitioner at the time he made his proposal, and was to be of sizes described in the contract, and the stone was to be delivered at such times and in such quantities as might be deemed necessary by the superintendent of said building. The contract, a copy of which is among the papers filed by the petitioner with his claim, is signed by William H. Hearne, superintendent on the part of the government, and by Philemon B. Hawkins, the petitioner.

The said Hawkins commenced the furnishing of said stone under the contract cited, and after having quarried 230 cubic yards, and delivered at the building in Raleigh 50 cubic yards, the rubble-stone was rejected by the superintendent of the building, who refused to receive such stone from the claimant under the contract. This officer of the United States then directed the claimant to furnish stone known as "ranged rubble" or "broken ashlar," which is a superior kind of stone, and was worth at that time and place \$12.50 per cubic yard.

In pursuance of and in obedience to the directions of the superintendent in charge of the work, Hawkins, the contractor, caused to be quarried and delivered at the site of the building in Raleigh 958½ cubic yards of "broken ashlar" stone. This stone so delivered was cut, trimmed, and squared by the claimant's workmen in conformity with the requirements of the superintendent, and so as to make them suitable for such a wall as the superintendent of the government chose to construct.

The wall contemplated by the contract was a rubble wall, or one made of undressed stone of irregular shape, whilst that actually constructed by the petitioner was a "ranged rubble," or "broken ashlar" wall, made of dressed stone, and it is in proof that in trimming and squaring the new and superior quality of stone chosen and directed to be used by the superintendent, one-fourth of the quantity was lost.

The claimant, at the time the stone furnished by him was rejected by

the agent of the government and superintendent of the work, was ready and willing to furnish stone of such a kind as the agent and superintendent wished and directed; but he insisted, at the same time, that the stone which he had furnished fully satisfied the requirements of his contract, and he repeatedly called the attention of both the superintendent and his assistant, that he was required to furnish stone of superior quality to that called for by the agreement. And when the government inspector was sent to examine the work, in August, 1874, the claimant protested and notified him, in the presence of the superintendent of the building, that he was entitled to and should demand compensation for the increased cost and superior quality of the stone which he was obliged to furnish outside of his contract.

This inspector several times visited the work during its progress, and upon one occasion in the company of the Supervising Architect of the Treasury; and the superintendent then called the attention of the Supervising Architect to the superior class of stone put in the walls by his direction, and that officer assented to it.

As the work progressed, the agents of the government made payments on account. These payments were made on formal vouchers, in which the stone was designated as rubble-stone by the superintendent of the building. It was so designated by him because he had no room for any other designation under the specifications. Appended to each of these vouchers is a receipt in the usual form, signed by the claimant. These payments were made by the officers as the work progressed, and were made simply on account.

Subsequently, on the 8th of October, 1875, the petitioner, Philemon B. Hawkins, entered suit against the government in the Court of Claims, and the Court of Claims, upon a hearing of the case, awarded to the petitioner the sum of \$1,566.95, arriving at this result in the following manner, as will appear from the following figures, to wit:

For 958½ cubic yards of stone, at \$5 per cubic yard .....	\$4,793 75
For 50 cubic yards of stone delivered and rejected, at \$5 per cubic yard .....	250 00
For 230 cubic yards of stone, quarried at \$3.50 per cubic yard .....	805 00
Total .....	5,848 75
Deduct payments to the claimant .....	\$3,825 00
Deduct value of the rubble-stone rejected .....	456 80
	<hr/> 4,566 95
Balance awarded by the court by the contract to be due .....	1,566 95

Now, the amount which should have been awarded him in equity and in reimbursement was at the rate of \$7.50 additional to the \$5 allowed upon the 958½ cubic yards of stone, which it was proven and shown to have been worth \$12.50 per cubic yard, which would amount to the sum of \$7,190.63, the amount necessary to make him, the claimant, whole upon his contract. The evidence is full and clear that the deviation from the specific terms of the contract was not the doing of the claimant, but was expressly enjoined by the superintendent of the work, who was the agent of the government, in spite of the claimant's protest. The evidence shows conclusively that the officers of the United States were in fault in this matter, and are responsible for the deviation from the contract, and it is neither right nor just that the United States should be allowed to profit by the acts of its agents at the expense of the claimant.

It is well to refer just here to the deposition of T. H. Oakshott, inspector in the Office of the Architect of the Treasury, which bears your committee out in this view of the case:



NEW YORK CITY, *New York* :

I, Thomas H. Oakshott, being first duly sworn, do depose and say that I was engaged as inspector in the Office of the Architect of the Treasury during the time of the fulfillment by P. B. Hawkins of his contract of May 15, 1874, for furnishing rubble-stone for the foundation walls of the custom-house and post-office building in Raleigh, N. C.; that a large portion of the stone furnished by Mr. Hawkins for said walls and used by the government in the construction thereof are stones which are classed as dimension among builders; or, more properly speaking, are such stone as are used in the construction of coursed ranged masonry work. I was sent several times to this building for the purpose of inspecting the work during its progress, and I ascertained that the stone which was then being furnished by Mr. Hawkins were much superior in quality and much more expensive than the stone called for by the terms of his contract, and I subsequently called the attention of the Supervising Architect of the Treasury to this fact, and it was concluded that the work having been commenced with these stones it was not desirable to change the same. The change in the character and quality of this stone was made under the directions of Mr. Thomas, who was the assistant superintendent of the construction of the building. Mr. Thomas was, I believe, by profession and occupation, a carpenter, and the rejection of the stone first offered by Mr. Hawkins under his contract was made by Thomas probably under a mistaken notion of the requirements of the contract and the plans and specifications for the building. The wall, as actually constructed, out of the stone furnished by Mr. Hawkins, is very much superior in quality, strength, and durability to the wall contemplated under the agreement made with Mr. Hawkins, and is very much more expensive and valuable. There can be no doubt that Mr. Hawkins has suffered largely from the change made in the size and character of the stone, and that he has lost a great deal of money by furnishing the said stone, in consequence of the changes aforesaid. It was not considered by the officers of the Treasury Department as within their power to give him relief beyond the terms of his contract, except that the said officers are of the opinion that they have lawful power to allow Mr. Hawkins for the loss in quantity occasioned by dressing the stone before putting them into the wall; this loss was considered to be about 25 per cent. in wastage.

J. H. OAKSHOTT.

Sworn to before me this 22d day of November, 1877.

BERNARD J. KELLEY,  
*Notary Public, New York County.*

Your committee further find that the said Hawkins, on the 29th of May, 1877, appealed from the judgment rendered in the Court of Claims to the Supreme Court of the United States; and, upon the said appeal the Supreme Court, in rendering its judgment, while affirming the judgment of the Court of Claims as legally and technically correct, upon the ground that the petitioner or claimant was estopped from demanding any compensation or relief for extra labor or extra outlay made on account of the work without the consent of the Secretary of the Treasury, in its judgment, admitted that the facts had within them an equity which, while it was barred from dispensing in law according to the strict terms of the contract, yet the claim was one worthy and entitled to the consideration of Congress, the only tribunal which, under the circumstances, could afford the claimant relief.

The Supreme Court, in its opinion, accept and determine as a conclusive proof in the case that the superior quality of "ashlar" stone which Hawkins was required to furnish and use in the construction of the building by the superintendent, in deviation from the express terms of the contract, was worth \$12.50 per cubic yard; and by the said decision it is admitted that the extra labor necessary in cutting, trimming, and executing the work with this superior stone was contracted and borne by Hawkins, the contractor.

The court affirmed the decision of the Court of Claims; but upon the distinct ground that while there were equities in the case entitling the claimant to relief, the Court of Claims had not jurisdiction to allow for anything where there was no promise to that effect either express or implied. The concluding words of its decision are: "Mere applications for extra allowance, unsupported by any contract, express or implied,

must be made to Congress, where alone they can be properly entertained." (See *Hawkins v. U. S.*, VI Otto, 689.)

Your committee, while concurring in the conviction that the claimant should not be allowed anything for the extra amount spent in putting up the work with the superior stone ordered by the superintendent, deem it but fair and just that the government should reimburse him the difference between the cost of the 958 $\frac{3}{4}$  yards of "ashlar" stone, which cost the claimant \$12.50 per cubic yard, and for which he has only received payment at the rate of \$5 per cubic yard, the value of "rubble" stone. The sum of \$7,190.63, the difference between the cost of the "ashlar" and the "rubble" stone, which the claimant outlaid at the instance and by the direction, and, if need be, by the fault of the agent of the government, the government has possession and enjoyment of, and it is but right that it should pay its value to the innocent contractor, who has suffered by this outlay.

Your committee therefore recommend that the bill be amended by striking out "\$8,962.50" and inserting "*seven thousand one hundred and ninety dollars and sixty-three cents,*" and with this amendment they recommend the passage of the bill.



## G. P. WORK.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. O'CONNOR, from the Committee on Claims, submitted the following

## R E P O R T :

[To accompany bill H. R. 5682.]

*The Committee on Claims, to whom was referred the bill (H. R. 275) for the relief of G. P. Work, have had the same under consideration, and submit the following report:*

The bill proposes to pay to G. P. Work the sum of \$48,500 for carrying the mails between the city of New Orleans and Trinity, Harrisonburgh, Columbia, Monroe, Trenton, and Copenhagen, during the years 1866, 1867, and 1869, under agreements with R. W. Taliaferro, C. W. Lowell, and W. M. Smallwood, postmasters at New Orleans.

It appears from the affidavit of R. W. Taliaferro that he was postmaster at New Orleans in 1866, 1867, and 1868, and that from January 1, 1866, to July 1, 1867, and from March 1, 1868, to August 1, 1868, there was no way of transmitting the mails to the offices mentioned in the bill except by boats up the Ouachita River; that the interest of New Orleans and the most of North Louisiana required that the mails should be carried to the points named; that claimant was running a line of boats between New Orleans and the points named from 1866 to 1869; that as postmaster at New Orleans, seeing and knowing the needs of the service and realizing the fact of the accumulation of mail matter at New Orleans, he requested the said Work to receive and deliver the United States mails at the offices mentioned, and expressed the belief that the government would compensate him for the service; and that the service was performed.

W. M. Smallwood makes affidavit that he was special post-office agent and acting postmaster at New Orleans from August 20, 1868, to April 30, 1869; that from January 20, 1869, to April 30, 1869, the mails were carried semi-weekly by steamers under the control of claimant to the points mentioned; that it was necessary to the agricultural and commercial interests of that section that the service should be performed; that there were no other means of transmitting the mails, and that he did, as special agent and acting postmaster, request G. P. Work to carry the mails to the points designated; that Work received and receipted for the mails in the regular way for the offices named and delivered them semi-weekly with safety and dispatch to and from the post-offices mentioned in the bill, and that during that time these post-offices could not have been supplied in any other manner, there being no routes under contract that were reliable.

C. W. Lowell succeeded Smallwood as postmaster in 1869, and testifies as to the continuance of and necessity for the services of Work.

There are several other affidavits showing that the services were rendered by Work, and there can be no doubt that the government received great benefit from them; but it is singular that any one should have continued for so long a time to render such services at the simple request of the postmasters at New Orleans, and only with their opinions as to compensation, and the question arises, Is he entitled to compensation under such circumstances? It has been declared by the Court of Claims (*Reeside vs. United States*, vol. 2, page 2) that where the proper officers of the government receive services or property under a contract made by one who was not an authorized agent of the government, and they use it for a lawful purpose, so that the government derives a legal benefit therefrom, the contractor may recover the actual value of the property sold or services rendered. Applying this principle to the present case, Work would be entitled to the value of the services rendered. The value of these services appears only upon the *ex-parte* statements and affidavits filed by the claimant, and the amount is large. We think it will be just to the claimant and to the government to refer the case to the Court of Claims, where the government can be represented on all questions that may arise. We therefore report a substitute for the bill presented, referring the case to the Court of Claims, and recommend that it do pass.

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HELEN M. SCHOLEFIELD.

APRIL 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4283.]

*The Committee on Claims, to whom was referred the bill (H. R. 4283) for the relief of Helen M. Scholefield, administratrix of the estate of Maj. C. M. Scholefield, deceased, late an additional paymaster of the Army, respectfully report:*

That prior to July 11, 1863, and until October 3, 1865, Maj. Charles M. Scholefield (then residing in Whitestown, N. Y.) was an acting additional paymaster of the Army of the United States, duly appointed and qualified as such, and having duly filed bonds therefor.

That between the above dates said Scholefield, as such paymaster, received and paid out large sums of money, rendering regular statements and balances thereof, and filed vouchers therefor, and on the 3d day of October, 1865, having rendered a final statement of his account with the government and paid over all the funds appearing charged to him, was honorably discharged.

That between the dates aforesaid one J. Ledyard Hodge was an additional paymaster at Washington, and in 1867, being involved with charges of defalcation, made returns and vouchers, among which appeared one of \$10,000 as an advance of that sum to said Maj. Charles M. Scholefield, August 10, 1864, and which he had never before that date reported, and which the reports of said Major Scholefield did not show as received by him. The department thereupon charged the said voucher in the sum of \$10,000 to the account of and against said Scholefield.

In 1868 said J. Ledyard Hodge, upon an indictment for defalcations to a large amount, was tried, convicted, and sentenced to the penitentiary. It does not appear that Maj. C. M. Scholefield was advised of this \$10,000 claim so made and charged to his account.

Maj. Charles M. Scholefield died November 21, 1869.

At the Fortieth Congress, March 16, 1868, an act was passed providing as follows:

That the proper accounting officers of the Treasury be, and they are hereby, authorized in the settlement of accounts of paymasters of the Army to allow such credits for over-payments made in good faith on public account since the commencement of the rebellion and prior to the passage of this act as shall appear to them to be just by such vouchers and testimony as they shall require.

In pursuance of this act, the accounting officers of the Treasury prepared, in December, 1871, a statement of the deficiencies and over-payments of the accounts of Maj. C. M. Scholefield as they appeared by the

vouchers filed, and which statement (omitting the aforesaid item of \$10,000) showed that he had in good faith overpaid the government in the sum of \$544.32, but by charging the \$10,000 item to his account Major Scholefield appeared owing the government the difference, viz. the sum of \$9,455.68.

In 1872 the government made claim upon the sureties of the bond of Major Scholefield for this sum of \$9,455.68, which led to an investigation by said sureties, who thereupon claimed the \$10,000 voucher, so far as to Major Scholefield's signature thereto, was a forgery. Thereafter an action was commenced in the United States court for the northern district of New York by the government against the sureties to recover the balance of \$9,455.68 appearing unpaid, and which action was, on the 19th day of March, 1874, tried before Judge Smalley and a jury, resulting in a verdict for the defendants, the only question being as to the signature of Major Scholefield to the \$10,000 voucher, and as to whether the same was a forgery or not.

An appeal was taken by the government, and a new trial thereupon ordered, which was had in April, 1876, before Judge Wallace and a jury, with the same result as the first trial, and the issue being the same. From this second verdict the government has never appealed, which results in a final decision that the \$10,000 voucher so reported by Hodge and charged to Scholefield and now so appearing upon the books of the proper officers of the Treasury was a forgery and void, leaving properly upon such adjustment to the credit of said Maj. C. M. Scholefield by reason of such over-payments, as before stated, the sum of \$544.32, and for the payment of which sum to the estate of said Scholefield this bill is introduced.

The \$10,000 item having been charged to the account of said Scholefield, although judicially declared a forgery and void, the department does not feel authorized to cancel and reconsider the same except upon the direction of Congress. Wherefore your committee report back said bill and recommend its passage.

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OBADIAH B. LATHAM AND OLIVER S. LATHAM.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 2533.]

*The Committee on Claims, to whom was referred the bill (H. R. 2533) for the relief of Obadiah B. Latham and Oliver S. Latham, have had the same under consideration, and make the following report :*

That the claimants in the years 1855 and 1856 made and entered into written contracts with the Secretary of the Treasury for the construction of two buildings for custom-house, court-house, and post-office purposes, the one at Buffalo, N. Y., and the other at Oswego, N. Y., according to the plans, specifications, and conditions of said contracts. Payments in and by said contracts were expressly agreed to be made in "good and lawful money of the coin of the United States."

The government in said contracts reserved the right, and the claimants assented thereto, to alter, add to, or diminish the work described in the plans and specifications, and the amount to be paid or deducted therefor agreed upon and stated, in addition to or diminution of the contract price, as stated in said contracts.

The contract price of the building at Buffalo was \$81,325. The contract price of the building at Oswego was \$77,255. Partial payments were made during the progress of the work. The buildings were completed, delivered to, and accepted by the government in 1858.

During the progress of the work very considerable alterations and additions were made by the direction of the Secretary of the Treasury, and when the claimants' accounts came to be settled a controversy arose respecting the amounts payable for such alterations and additions, and as the parties could not agree thereupon, the claimants brought suit in the Court of Claims in 1859.

A large amount of testimony was taken on both sides, and the case was not decided until 1862, in which year the majority of the court awarded the claimants the sum of \$36,440.94. The minority of the court was in favor of awarding a much larger amount. The Court of Claims then having no power to do more than recommend payment by Congress, in pursuance of the statutes then regulating its proceedings, reported its opinion to Congress at the succeeding session, with the testimony taken in the case, and the arguments of counsel. The claimants appealed from such award to said succeeding Congress—the second session of the Thirty-seventh Congress—and said opinion, testimony, and arguments of counsel were referred to the Committee on Claims of the House of Representatives.

After hearing said appeal, the committee unanimously reported a bill to the House paying to said claimants, as the amount justly due them, the sum of \$100,208.59, and directing the Secretary of the Treasury to pay the claimants that amount out of the unexpended moneys theretofore appropriated for these buildings during their construction. At the same session of Congress the bill passed the Senate, but was reduced by the Senate to \$74,583.37, and as so amended passed both houses of Congress and became a law March 3, 1863.

After the bill became a law, and on the 6th of March, 1863, the claimants applied to the Secretary of the Treasury for payment, and demanded payment in coin, and insisted that by the express terms of their contracts and the acts of Congress making appropriations for the buildings, and the act of Congress directing payment out of the unexpended appropriations for these buildings, they were entitled to be paid in coin. This was refused by the Secretary of the Treasury, who insisted on payment in Treasury notes. The claimants were pressed by their creditors and were in needy circumstances, and were forced to receive what was offered them. They received Treasury notes, but, prior to receiving them, and on the 9th day of March, 1863, they filed with the Secretary the following protest in writing:

*To the Secretary of the Treasury of the United States:*

SIR: By the terms of our several contracts with the Government of the United States for the construction, enlargement, and completion of the United States custom-house at Buffalo and Oswego, the government is required to pay us in the coin of the United States for said work.

These contracts have been affirmed by the Court of Claims, and the recent act of Congress for the relief of O. B. and O. S. Latham refers to them.

We therefore insist that we are entitled to coin in the payment of the sum of \$74,583.37 allowed us by the said act of Congress, and in receiving the Treasury notes of the government in payment we do so because the government has, on our application for the same, refused to pay us in coin. And we protest that said payment is not according to said contracts, and that in receiving Treasury notes we do not intend to surrender or release our right to claim and receive payment in money which shall be equal to the coin of the United States this day.

O. B. & O. S. LATHAM.

WASHINGTON, March 6, 1863.

The claimants again petitioned the Court of Claims for the balance claimed to be due them, being the difference in value between the Treasury notes paid them and coin at the date of such payment, to wit, the sum of \$43,631.26.

In March, 1865, the majority of the court decided that the Treasury notes, so as aforesaid paid, were a legal tender for all debts of the United States, even for those where payment was expressly promised to be made in coin. At that time no appeal lay from the decision of the Court of Claims. Right away after the passage of the act of 1866, allowing such appeals, the claimants appealed from the decision of the Court of Claims to the Supreme Court of the United States, and the case was reached in regular order in March, 1868.

A number of cases involving different aspects of the legal-tender question were pending in the Supreme Court at that time, most of them caused between private parties, to wit, *Bronson vs. Rodes* and *Hepburn vs. Griswold*; but two, that of the Lathams and that of *Deming*, were cases against the United States on appeal from the Court of Claims. The cases of *Bronson vs. Rodes* and *Hepburn vs. Griswold*, were argued as test cases, the Attorney-General of the United States appearing in said cases, for the reason that they were test cases, and their disposition would dispose of other cases in which the government was a party. The claimants' case and others were passed to await the decision in these cases.



and it is claimed by the claimants that it was understood that the decision of the other cases would settle all questions in the claimants' and other cases growing out of the legal-tender act.

The Supreme Court, after mature deliberation, decided, in the case of *Bronson vs. Rodes* (7 Wallace, 258), that Congress had not made Treasury notes a legal tender for debts expressly agreed to be paid in coin; and in *Hepburn vs. Griswold*, decided, in February, 1870 (8 Wallace, 603), it was also decided that Treasury notes were not a legal tender for debts contracted in lawful money before the passage of the legal-tender act of February 25, 1862. These decisions settled the case of these claimants in their favor.

Subsequently, upon a change in the court, and the accession of two new members, the majority of the court ordered the case of these claimants and the case of *Deming vs. The United States* to be argued on all the points, and decided to have the whole question, thus determined, reargued. Upon hearing these facts, these claimants dismissed their appeal.

The legal questions were, however, subsequently reargued in the case of *Knox vs. Lee* (12 Wallace, 457), and the court therein reversed its former decision, made in the case of *Hepburn vs. Griswold*, but very soon thereafter, in the case of *Trebilcock vs. Wilson* (12 Wallace 687), it reaffirmed *Bronson vs. Rodes*, holding, which is now the law, that debts expressly agreed to be paid in coin cannot be discharged by legal-tender notes.

After dismissing their appeal, the claimants applied directly to Congress for relief, and have prosecuted their application to the present time.

A favorable report was made from this committee at the second session of the Forty-fifth Congress, but the matter was not reached.

In the opinion of the committee justice to the claimants requires that their case should stand as if the judgment of the Supreme Court had been given that they were entitled to receive coin in payment of the balance due them. Had their case been heard at any time between the date at which it was first called, in March, 1868, and the date when the decision of the court was announced in *Hepburn vs. Griswold*, in February, 1870, such undoubtedly would have been the decision on that part of their case. The decision of their case was postponed by order of the court upon the understanding, as it is claimed, of court and counsel, above set forth, and the claimants claim to have waited two years in confident reliance on that order and understanding, only to have it defeated in a manner which drew from the four eminent justices, whose names have been given, an earnest protest against it as a violation of the rules of judicial proceeding in that court.

There were originally three questions in the case: (1) Whether the agreement in the contract to pay coin was limited to the work specified when the contract was made, or extended to the alterations and additions in that work which the government reserved the right to require and the claimants agreed to make if required; (2) whether, if the contract was for coin, the right to require coin was taken away by the legal-tender act; (3) whether, if the right to require coin was not taken away by the act, the claimants' receipt of the legal-tender notes under the circumstances was in full satisfaction of the claim.

The first two questions were ruled in favor of the claimants by the decision of the Supreme Court in *Bronson vs. Rodes* and *Hepburn vs. Griswold*. In the first (which has never been reversed, but has been since reaffirmed) it was held that if the contract called for coin it could

not be satisfied by the tender of notes. In the second it was held that if the contract was made and performed before the passage of the legal-tender act, then the claimants were entitled to demand coin, so that whatever might have been the view of the court as to the express agreement to pay coin, the decision as to the right to demand coin would have been in favor of the claimants according to one or the other of the two rulings.

It is therefore unnecessary to determine whether the express agreement to pay coin did apply as well to the alterations ordered as to the work originally specified; but the committee have no doubt that the coin clause applied to all the work.

Your committee are of the opinion that the claimants were entitled to receive payment in coin of the amount due them under their contract as settled and adjusted by the act of March 3, 1863. Their contract called for payment in coin. The appropriations made for the work during its progress from 1855 to 1858 were necessarily in coin. The value of the work was also necessarily in coin, for the work was all done, and the testimony as to its value was all taken prior to the passage of the legal-tender act, and moreover applied only to the value of the work when executed.

When the act of March 3, 1863, was passed there was then unexpended of the moneys previously appropriated as above stated for the construction of these buildings the sum of \$88,496.73. The act of March 3, 1863, provided for payment from an unexpended appropriation made for these buildings. Was it not an equitable assignment of \$74,583.57 of the \$88,496.73 remaining unexpended of the appropriations made for these buildings? There was in March, 1863, from the 3d to the 9th, inclusive, upwards of two millions of coin in the Treasury belonging to the United States.

Your committee are therefore of the opinion that the claimants are justly entitled to the difference between what was paid to them in Treasury notes and the value of coin at that date, without interest, and they accordingly report back the bill referred to them, and recommend its passage as so amended.

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SIDNEY P. LUTHER.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1855.]

*The Committee on Claims, to whom were referred the bill (H. R. 917) for the relief of Sidney P. Luther, and accompanying papers, have duly considered the same, and respectfully submit the following report :*

It appears that on the 6th day of August, 1870, the said Sidney P. Luther was the owner of a pair of steers which he had purchased in Canada and imported into the United States; that they had been duly entered at the port of Canaan in the district of Vermont, and that the legal duties thereon had been duly paid; that afterward, on the 5th day of September, 1870, the said steers were seized by an inspector of customs for the district of New Hampshire, upon suspicion that they were smuggled or undervalued, and kept by him until the 14th day of October following, when they were appraised under the laws of the United States at the sum of \$85, whereupon the said Luther paid the said sum to the said inspector, and the said steers were returned to him; that the said sum of \$85, less the expenses of appraisement and sale, was afterward duly paid into the Treasury; that within twenty days from the seizure of said steers the said Luther filed with the collector of customs at Portsmouth, N. H., a bond with sufficient sureties to pay the cost of prosecution in the event that said steers should finally be adjudged forfeited, pursuant to the provisions of section 3076 of the Revised Statutes; that after investigation into the facts of the case the United States district attorney for the district of New Hampshire became satisfied that no cause of forfeiture or condemnation of said steers existed, and declined to institute any information or other proceeding for that purpose; that the said Luther applied to the Secretary of the Treasury to have the \$85 paid by him refunded, and that the department refused to refund the same, although in view of the facts disposed to do so, on the ground that it was barred from affording the desired relief—first, because the proceeds of the seizure had been distributed, and, secondly, because the application was not made within the time prescribed by either section 13 or 15 of the act of July 18, 1866, or by section 3078 or 3080 of the Revised Statutes, but that said department was of opinion that the said Luther ought to obtain the relief desired, and commended his claim to the favorable consideration of Congress; and that the said Luther did not apply to the Secretary of the Treasury within the time prescribed by law, first, because he was not aware of such requirement, and, secondly, because he expected the said district attorney to file a libel or

information against the said steers, whereby the said Luther would have an opportunity of securing his rights by an adjudication of the court.

Your committee are of the opinion that the said Luther is justly entitled to relief, and therefore report the bill, with a recommendation that it be passed.

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F. W. MILLER.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

## R E P O R T :

[To accompany bill H. R. 5683.]

*The Committee on Claims, to whom was referred the petition of Frederick W. Miller, have had the same under consideration, and beg leave to submit the following report :*

That said petitioner, Frederick W. Miller, on the 3d day of September, 1879, was postmaster at Elkhart, in the State of Indiana. That the post-office occupied the whole of the first floor of a two-story brick building, safely and securely constructed. That at the close of the office on the evening of September 3, 1879, the petitioner had in his possession in said post-office the sum of \$305.90, belonging to the money order department of such office, and being the money of the United States; also, some change, amounting to between \$5 and \$6, and from \$12 to \$15 worth of postage-stamps, all the money and property of the United States. That on the night of September 3, 1879, said \$305.90 were deposited in an iron safe, fire-proof, Hall's manufacture, Cincinnati, Ohio, height 50 inches, width 37 inches, and depth 30 inches, and having two sets of doors with combination lock. Said money was placed in an iron box set in the upper part of the inside cabinet work of said safe, being 7 inches by 8 inches in width and height, and 12 inches in depth, with iron door and lock; that said safe was kept in said post-office; that said post-office was locked and carefully fastened, and said safe securely locked on the night in question; that said safe also contained valuable papers and personal effects of said Miller, of the value of about \$8,000, said safe being the placé where he was accustomed to keep his valuable personal effects; that the stamps and other change above mentioned were in another iron safe kept in said post-office, which was also securely locked on the night in question, and was safe against wrongful entrance, unless blown open; that on the night of September 3, 1879, some person or persons, unknown to said Miller, and without fault or negligence on his part, forcibly broke through the rear shutter and window of said post-office, blew open said safe by some explosive substance, and stole said sum of \$305.90, and said \$8,000 worth of notes and valuable personal papers, and also said postage-stamps and small change aforesaid; that about ten days thereafter said notes were found secreted under sawdust in an ice-house in Elkhart; that no money or stamps, as aforesaid stolen, have been found or discovered; that said Miller has made good said loss to the United States.

Your committee therefore report in favor of paying said Miller said sum of \$305.90; also, said sum of \$5; also, \$12 for said stamps, amounting in all to \$322.90; and report the accompanying bill for that purpose.



ROBERT C. NARRAMORE.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5684.]

*The Committee on Claims, to whom was referred a bill for the relief of Robert C. Narramore, late postmaster at Derby, Conn., have considered the same, and make the following report:*

The facts of the robbery of the said post-office by burglars on the night of July 4, 1873, by blowing open the safe, and without any negligence on the part of the said postmaster, are shown by the report of the special agent of the Post-Office Department who investigated the case, and by affidavits of the postmaster and citizens. The postmaster's sworn statement shows the amount of stamps stolen to have been \$320.80 belonging to the government.

Your committee report back the bill authorizing the department to credit on the account of the said postmaster the amount so shown to have been stolen, and recommend its passage.

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DAVID WARD.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee of Claims, submitted the following

REPORT:

[To accompany bill H. R. 5685.]

*The Committee on Claims, to whom was referred the papers in the claim of David Ward, have had the same under consideration, and submit the following report:*

That the petitioner, David Ward, was, on the 28th day of March, 1878, the owner and in the possession of a United States Treasury note of the denomination of one hundred dollars, letter W, No. 319869; that he was then a resident of Middlesex, Washington County, Vermont; that on that day the said Treasury note was burned and totally destroyed by fire without the fault or negligence of said petitioner, at Middlesex aforesaid.

That the Treasury Department cannot give relief in such a case, the note being totally destroyed, as the Treasurer of the United States has decided in this case in his letters of April 4 and June 11, 1878, respectively, and therein stating that only Congress could give the relief asked for. The petitioner asks that an act be passed by Congress authorizing the Secretary of the Treasury to pay him one hundred dollars.

We respectfully report that such relief be granted, and recommend the passage of the accompanying bill.



J. B. HOLLOWAY.

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APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. Res. 271.]

*The Committee on Claims, to whom was referred the claim of J. B. Holloway, have had the same under consideration, and report as follows:*

That in June, 1878, the Committee on Reform in the Civil Service had \$7,000 appropriated to pay certain claims against the House of Representatives. All these claims were referred to a subcommittee, consisting of Harrison (chairman), Garth, and James, whose duty it was to audit all claims found to be just. This money was not available until after Congress adjourned. The subcommittee detailed Mr. Holloway to do their clerical work, with the understanding that he was to be paid for the time he remained at Washington, which was 68 days, at \$6 per day, amounting to \$408.

On the 1st of March, 1879, a meeting of the subcommittee was called to pass on this claim. It was unanimously allowed. A voucher was prepared, and Mr. Harrison said he would approve it before he left Washington. During the excitement, &c., of final adjournment he omitted to do so. When the Forty-sixth Congress met and the committees were announced, this claim was presented to the present Committee on Reform in the Civil Service and unanimously allowed, and the Clerk of the House was ordered to pay it. The Clerk declined to pay, on the ground that the First Comptroller had decided that the present Committee on Reform in the Civil Service was not vested with all the powers and privileges heretofore possessed by that committee in the Forty-fifth Congress.

We respectfully beg leave to recommend the allowance of this claim, and for that purpose report the accompanying joint resolution.



JENNIE K. MOORE.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5686.]

*The Committee on Claims, to whom was referred the memorial of Jennie K. Moore, widow of Thomas L. Moore, have had the same under consideration, and submit the following report:*

That this claim was introduced in the second session of the Forty-fifth Congress, and referred to the Committee on Claims of that Congress. That said Committee considered the same and submitted the following report thereon, which report is adopted and made a part of this report, together with the recommendation therein made, and the bill accompanying the same:

*The Committee of Claims, to whom was referred the memorial of Jennie K. Moore, widow of Thomas L. Moore, have had the same under consideration, and submit the following report:*

The memorialist sets forth the facts that her husband, Thomas L. Moore, was clerk of the United States district court for the western district of Virginia, and that for the year 1858 he had earned, as such clerk, the sum of \$628.95 for services rendered. That her husband came to his death by suicide, having become mentally deranged. His estate was committed to the sheriff of Harrison County, David W. Robinson, for settlement, under the laws of West Virginia. That the said Robinson never knew of the existence of the claim for fees and services rendered in 1858, till 1875, and it was not till that year that it was known, the statements having been found in that year by A. C. Moore, a brother of the deceased, in a box in an unusual place for such papers. That the said fees have never been paid, and the said sheriff having completed his office, she asks that an appropriation be made to pay the same to her. She sets forth the condition of her husband's mind, and the general confusion and suspension of business in that country, to explain the delay and account for the fact of non-presentation of the claim.

The memorial is accompanied by the affidavits of Jasper Y. Moore and Alexander C. Moore, setting forth the facts that the services were rendered, and the manner in which the accounts for fees, mileage, and per diem were found in a box in September, 1875, and also the affidavit of D. W. Robinson, setting forth that he was sheriff from the year 1864 to 1867, and that in the former year the estate of the said Thomas L. Moore was committed to him for administration; that as such administrator he made diligent search through the papers of the deceased for his effects, but did not find the accounts for fees, mileage, and per diem due to him as clerk, and that he did not know that they were in existence until informed in 1875 that they had been found. He further sets forth that he has no interest in the claim. Thomas L. Moore died in 1864. The account, as made out by the said Thomas L. Moore, in 1858, and certified, is filed with the memorial. The account embraces a large number of items, all of them verified by affidavits, some by Thomas L. Moore himself, as clerk, and others by his deputies, and all of them certified as "examined and allowed" by John W. Brockenbrough.

Mr. Brockenbrough was the judge. These accounts or bills amount in the aggregate to \$628.95. They were never paid, and Mr. Taylor, of the First Comptroller's Office of the Treasury, under date of February 12, 1877, says: "Owing to the lapse of time,

and to the want of an appropriation, said accounts cannot be allowed and paid without special authority from Congress."

It appears that the administrator has discharged the duties of his office and that there is no claim to these accounts on his part for the purpose of settling the estate, and as the amount has not been paid, we think it just that the prayer of the memorialist, the widow of said Thomas L. Moore, should be granted.

We therefore report the accompanying bill, and recommend that it do pass.

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EBEN EVELETH.

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APRIL 3, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5687.]

*The Committee on Claims, having had under consideration the bill (H. R. 2294) and petition of Eben Eveleth, for compensation to himself and his legal assistant for services in auditing and reporting to the Court of Claims the facts in the cases of claimants upon the proceeds of captured cotton in the Treasury, report as follows:*

The grounds and merits of the petition are so clearly set forth in the unanimous opinion of said court of the 17th May, 1879, and which embodies the views of the Supreme Court on the subject, that we incorporate that opinion herein, viz:

AT CHAMBERS, May 17, 1879.

NOTT, J., filed the following opinion:

In 1873 a number of suits brought under the *Abandoned or Captured Property Act* (12 Stat. L., p. 620) were before this court, in which the claimants had established a right to recover. But the cotton of each claimant had been intermingled after capture with that of other parties, and while it was clear that each of the parties before the court was entitled to participate in the fund derived from the intermingled mass, it was by no means clear what the extent of the recovery, that is to say, the rate per bale, should be. The number of bales captured had been greatly diminished in consequence of some of the cotton having been used for military purposes after capture, in consequence of releases from the mass to persons claiming to have been owners, in consequence of rebaling damaged cotton, and in consequence of losses occurring *in transitu*. One effect of these causes was that the total number of bales sued for by all of the claimants threatened to exceed the number of bales the proceeds thereof had reached the Treasury. It was evident on equitable principles that every claimant who contributed to the mass of intermingled cotton, on the one hand should be treated as the owner of a proportional share of the mass, but that, on the other hand, he should be charged with a proportional share of the losses and expenses that had diminished the fund.

To accomplish that result it was necessary to have such of the proceeds in the Treasury as had been derived from the mass, segregated into a distinct fund; to have all of the losses and expenses chargeable to the fund ascertained and determined; and to have all of the claimants upon the fund brought before the court in one proceeding. The court made numerous attempts to take and state an account of these proceeds and the claims upon them such as it had made unassisted by an accountant in the *Price Case* (7 C. Cls. R., 567), but every fresh attempt showed only more clearly the impossibility of reaching a just conclusion without a thorough and exhaustive examination, not only of treasury agents' returns, to be found in the archives of the cotton bureau, but also of military officers' reports and accounts, which are scattered through different bureaus of both the War and Treasury Departments.

Accordingly the court, June 4, 1873, selected a gentleman who had been for more than forty years a trusted public servant in the Treasury Department, and appointed him as special commissioner to ascertain what proceeds should constitute a fund, and to take and state an account of the claims upon, and of the expenses and losses

chargeable to it. The Secretaries of the Treasury and War Departments cordially co-operated with the court in this task, and ordered that the commissioner should have access to the official papers and accounts on file in their departments.

The first report of the commissioner came to a hearing in the spring of 1874 (*Boyd's Case*, 9 C. Cls. R., 419), and his second report, covering sixty-eight contested cases and involving more than a year of his time, came to a hearing in the spring of 1875 (*Sundry Cotton Cases*, 10 C. Cls. R., 502). Some of these cases were carried to the Supreme Court, and are reported under the title of the *Intermingled Cotton Cases* (92 U. S. R., 651).

The right of this court to appoint the commissioner was one of the questions involved, and with regard to it the Supreme Court said:

"Here the property of different owners was intermingled in a common mass. There was, therefore, an ownership in common. The Court of Claims, ascertaining that there was likely to be a deficiency in the fund, very properly brought all the several claimants together, and conducted the suits in such a manner as to compel them to litigate with each other.

"The Court of Claims cannot delegate its judicial powers. It must itself hear and determine all causes which come before it for adjudication; but we see no reason why it may not use such machinery as courts of more general jurisdiction are accustomed to employ under similar circumstances, to aid in their investigations. In these cases complicated accounts and complicated facts were to be passed upon. The court referred them to a special commissioner to state the accounts, marshal the assets, and adjust the losses, 'so that equal and exact justice should be done to all.' . . . The report of the commissioner, when made, was considered by the court, and, after due deliberation, approved. The court determined the title of the several claimants, and their right to the proceeds, upon evidence irrespective of the commissioner's report, whenever requested to do so by the claimants or the defendants. We see no error in this.

Two things, therefore, have been determined by the highest judicial authority: 1. That this court had power to appoint a commissioner to take and state an account between contending parties. 2d. That the appointment of this commissioner, and the circumstances, was in the highest degree advisable and proper. Nevertheless, an important question now arises as to his compensation, and the power of the court to direct payment of it.

When the order of reference was draughted it was intended to apply to a number of cases which had been before the court, in which it had been determined that the claimants were *prima facie* entitled to recover, the amount of their recoveries being the matter in doubt. The order of reference accordingly provided that the costs of the reference should be apportioned among the claimants who recovered in the ratio of their respective judgments. The commissioner may very well have supposed that substantially every claimant would recover, and that his fees would thus be provided for. But subsequently a great number of cases were referred by the claimants under the same order, and the commissioner's entire time has been given to the work since the order of June 4, 1873. Since the spring of 1875 the amounts recovered by claimants have been small, and the commissioner's fees consequently trivial, amounting to but \$1,750 for four years' work, including that of his legal assistant, to whom one-third of the compensation has been awarded. Moreover, of the cases referred to the commissioner twenty-four of them, claiming \$858,239.50, have been reported upon adversely by him, and judgments consequently have been rendered in favor of the defendants.

The commissioner now presents his petition to the court setting up these facts, and praying that his fees in those cases wherein he reported in favor of the defendants be fixed by the court, and that an order be made directing payment by the Treasury out of the abandoned or captured-property fund.

Congress early recognized the fact that the costs of defending the captured-property cases were properly a charge upon the captured-property fund. The *joint resolution* 30th March, 1868 (15 Stat. L., p. 251, § 3), which placed that fund in the Treasury, likewise appropriated "a sum of the proceeds" of the captured property, "not exceeding seventy-five thousand dollars," among other items, for the "defense of the United States against suits for or in respect to such property in the Court of Claims." But the power of disbursing the sum so appropriated was confided exclusively to the Secretary of the Treasury, and no authority to order the payment of legal expenses incident to litigation out of the fund in litigation has ever been conferred by law upon this court.

If the court had jurisdiction of the fund, so that payment of the commissioner's fees might be directed as his petition prays, his application would be referred to the law docket, in order that the defendants might be heard on the merits, and the amount be properly fixed. But we all agreed that the court is utterly without jurisdiction, and, being so, that we can neither determine the amount of his fees nor direct their payment from the fund in the Treasury. For these reasons the application of the commissioner must be denied.



*Ordered*, That the application of Commissioner E. Eveleth, bearing date March 3, 1879, for an order directing the allowance to him of compensation for his services as commissioner, be overruled for want of jurisdiction, and without prejudice.

Section No. 1070, chapter No. 21 of the Revised Statutes, relative to the Court of Claims provides "that said court \* \* \* may appoint commissioners." Pursuant thereto, the appointment of the petitioner, certified June 4, 1873, under seal of the court, is presented. Beginning under that appointment his services were exclusively dedicated to the subjects with the investigation of which he was charged, until his labors closed with the rendering of his ninth and final report on November 5, 1878.

His several reports embraced the examination of 102 cases, involving nearly a million of dollars, and they were almost invariably adopted as the decisions of the court.

Complicated points of law, however, frequently occurring in connection with his duties, the court on July 23, 1875, sanctioned his employment of a legal assistant, and when on rendering their third report, a petition for their compensation was presented, the court awarded the sum of \$1,500, equivalent to 3 per centum gross on about \$50,000 awarded from the fund in favor of the claimants thereon, and directed the distribution of said \$1,500 in the proportion of two-thirds to the commissioner and one-third to his legal assistant, said allowance to constitute a charge upon said awards. But they decided that they were without jurisdiction of the fund as to awards made from it in favor of the government, and while fully recognizing the services, dismissed the petition, exclusively on that ground, and without prejudice. (See the opinion.)

The decrees in favor of the United States as the result of his several reports, aggregated \$858,239.50. For the labor which these reports involved, and which was necessarily extensive and arduous, he and his legal assistant have received no compensation whatever.

We think it neither reasonable to expect nor politic to accept such service without fair compensation, nor are the petitioner's equities impaired by the consideration that he might have personally profited from the virtual control of such an enormous fund, had he been pervious to improper influences.

We find that his services from March 27, 1876, to November 5, 1878, a period of thirty-one months, were continuous and important, and they inured exclusively to the advantage of the government; and while we cannot adopt 3 per centum, the basis of remuneration implied by the court, on so large a sum as \$858,000, as our guide, we think him fairly entitled to the sum of \$5,000, which shall include all liability to his legal assistant.

We therefore report the accompanying bill, and recommend its passage.

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ALBERT GRANT.

APRIL 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5688.]

*The Committee on Claims, to whom was referred the memorial of Albert Grant, having had the same under consideration, beg leave to make the following report:*

At the December term, 1868, of the United States Court of Claims, the memorialist obtained judgment for the sum of \$34,225.14 for extra work and material furnished in the erection of a fire-proof store-house at the Schuylkill Arsenal, in Philadelphia, in the year 1867. The memorialist claims that the court, in entering judgment in said cause, made a mistake, having taken Mr. Fraser's report, as architect of the War Department, instead of his evidence in the cause, which would have made the judgment \$46,738.86.

Upon the examination of the evidence taken in said cause, it clearly appears that there was no evidence upon which such a judgment could be rendered.

Four witnesses testified to the value of such extra work, and their testimony was in no way contradicted, and was as follows:

Total estimated extras, as per B. Oertly's testimony .....	\$47,038 68
Same, John Fraser's testimony .....	46,738 86
Same, Allen A. Grant's testimony .....	48,814 64
Same, Jackson Grant's testimony .....	50,373 55

The average of this testimony is \$48,241.48, showing the court to have made a mistake of \$14,016.34.

In the course of the trial it appeared that the witness, Fraser, being the government architect, had, some time previous to giving his testimony in said cause, been called upon by the War Department to make an estimate of the value of extras, and in such estimate had fixed them at the sum of \$34,225.14.

On the trial of the cause Mr. Oertly testified to the extras as follows (taken from claimant's testimony, Exhibit A, on file with the committee, pages 75 to 77, inclusive):

Item 1. For cutting out and removing 315 cubic feet of concrete footing and replacing same by grouted work of pure cement, at \$1 per foot .....	\$315 00
Item 2. For difference common concrete as required by contract, and grouting of pure cement, as required by the government, on 349 perches of footings, at \$7.50 per perch .....	2,617 50
Item 3. For changing 75 stones placed in walls for iron beams to rest upon, required by the specifications to be 8 by 12 inches, taken out and replaced by stones 8 by 24 inches, and the same taken out and again changed to 8	

by 12, as also for taking down the brick walls, securing them, and rebuilding the same by order of the government officials.....	\$500 00
Item 4. For plastering of basement walls, one coat, 1,722 yards, at 20 cents per yard.....	344 40
Item 5. For extending projection four inches, and filling in between rafters around the entire building of brick work, being 37,080 bricks, at \$50 per thousand.....	1,854 00
Item 6. For 5,000 superficial yards of grouting, 2½ inches thick, spread over floor, in addition to that required for haunches, being of pure cement, at \$1.25 per yard.....	6,250 00
Item 7. For the difference in leveling up the haunches of the arches, for the floors to rest upon, in grout of pure cement, rather than in concrete of lime and sand, as required by contract, amounting to 311 perches, at \$10 per perch.....	3,110 00
Item 8. For difference between laying floor arches in lime, cement, and sand, as required by contract, and laying the same in pure cement mortar, 369,380 bricks, at \$6 per thousand.....	2,216 20
Item 9. For difference between common concrete made of lime and sand for cellar floors, and grouting of pure cement, 212 perches, at \$9 per perch....	1,908 00
Item 10. For difference in roof, between that as required by contract and as actually built by order of the government officials, including a change in the iron tie-rods from single 1½ inch round rod to complicated double rods, increasing the number of trusses, drilling purlines, and supporting the same by iron rods encased in gas-pipe, making four complete sets of tie-rods running around the entire building, in making extra hips and valleys, occasioning large increase in material and labor, with other modifications and changes.....	13,938 40
Item 11. For scuttle to roof, none being required by plans or specifications.....	75 00
Item 12. For carrying up partition walls to ridge of roof, requiring 37,092 bricks, at \$30.....	\$1,112 76
and fitting and cutting to roof 324 lineal feet of wall, at 50 cents per foot.....	162 00
Item 13. For topping eight chimneys with North River flagging.....	1,274 70
Item 14. For transom windows with iron sash and glass.....	96 00
Item 15. For taking down 31,500 bricks and stone belt-course on west front of building, and relaying and resetting the same (all difficult work), at \$30 per thousand.....	100 00
Item 16. For 50 sets of bolts placed in the walls for roof trusses over courtyard, viz, two bolts and iron plate to the set for clamping brick work....	945 00
Item 17. For taking down four 9-inch beams, and replacing the same by four 12-inch girders, viz, placing 12,300 pounds iron beams, at ½ cent per pound.....	150 00
Item 18. For building addition walls between old and new building, and placing iron beams for said walls to rest upon, requiring 14,400 bricks, at \$30 per thousand.....	432 00
and placing of 1,820 pounds of iron beams, at ½ cent per pound.....	13 65
Item 19. For difference between copper gutters, ridges, valleys, and downspouts, as required by the department, and the tin gutters, valleys, spouts, and ridges required by contract.....	445 50
Item 20. For 2,610 pounds additional iron beams in west stairway, not required by the original plans, at 10 cents per pound.....	261 00
Item 21. For cutting 27 holes for hoisting apparatus, and putting iron eyes, at \$6 each.....	162 00
Item 22. For cutting out brick work to admit new girders (see Item 17) necessary on account of delay.....	175 00
Item 23. For placing 700 iron beam-plates not required by specifications, after all the beams had been placed, at 50 cents each.....	250 00
Item 24. For change of hatchway on account of error in drawings, 2 additional beams required, and altering and changing frame work, also making good the brick work.....	150 00
Item 25. For closing four widows opening into basement of old building....	100 00
Item 26. For four sets of plank steps to basement, not required by contract.....	200 00
Item 27. For difference between bedding the brick pavement of the several floors in pure cement 1½ inch thick, and bedding the same in common mortar, as required by contract, 6,667 yards, at 87 cents per yard.....	5,800 29
Total.....	47,008 40

On the trial of the cause, Mr. Fraser, architect of War Department, testified as follows, to wit:

The amount of my estimate was \$34,225.14. I was induced to make this report low, understanding that the contractors had large amounts to pay upon the building; supposing that by making it low, it would be more likely to be allowed by the department. Since making my report I have, with Mr. Oertly, reviewed my estimates as to the extra work charged. The paper now shown me, marked Exhibit A, appended to the deposition of Mr. B. Oertly, in this case, gives the estimate as made by us. I have compared the estimate in my report with the estimate made by Mr. Oertly and myself, of items number 1 to 21, inclusive, and they are identical; I have had occasion to change the amount of my estimate on items number 1 and number 21, inclusive, by adding \$6,038.43; the total amount of my present estimate upon these items is \$40,263.57. On inspecting the building and comparing it with the specifications, plans, &c., I find other items than those before reported by myself; these additional items of extra work are set forth in the amended petition, and numbered from 23 to 27, inclusive. I have made my present estimate from actual inspection of the work, and from comparing it with the contract, plans, and specifications; the work charged for as extra was all done under me, with the exception of items one, two, three, and fifteen; it was done by my order, and with the knowledge of the government officers; government officers visited the work daily with me; I was at the building with Colonel Crilly, almost every day, from the time of my appointment.

Nowhere in the evidence can any testimony be found to support a judgment of \$34,225.14. No evidence was produced to cut down the amount of the estimates as made by the different witnesses. The court, in rendering judgment, say:

In respect to the facts which are applicable to the first demand the United States Assistant Attorney-General, after a most careful examination of the whole testimony in his printed brief, very justly remarks that:

"It is not our purpose to discuss the evidence which it is alleged establishes the several items of the claimants' demand. The evidence adduced for that purpose may be regarded as sufficient to establish the claimants' right to recover, if the government is liable to pay, the several amounts the claimants allege they are entitled to receive."

The same Assistant Attorney-General who had the case in charge for the United States makes the following statement:

DEPARTMENT OF JUSTICE,  
Washington, January 11, 1875.

SIR: Your note to the Assistant Attorney-General, in regard to the claim of A. Grant, has been handed to me, as I had charge of the defense of his suit against the government in the Court of Claims. Whether the court made a mistake in rendering judgment in Grant's case is rather a matter of inference than of positive knowledge. When the judgment was rendered I supposed the court had made a mistake, and wondered why Grant's counsel did not move for a correction of the judgment. The figures given by the court in the judgment are not to be found in the testimony of any witness, but are taken from a report made by Mr. Fraser before the suit was brought. Mr. Fraser was a witness in the case, and in his testimony he estimates the value of the extra work done by Grant at \$46,738.86. This was the lowest estimate made by any of the witnesses.

Very respectfully,

ALEXANDER JOHNSON,  
Special Assistant Attorney-General.

Hon. J. C. BURROWS,  
House of Representatives.

The Hon. Joseph Casey, then Chief Justice of the Court of Claims, makes the following statement relative to the error of the court:

WASHINGTON, D. C., January 13, 1875.

DEAR SIR: I have yours of yesterday. I have carefully re-examined your case in the Court of Claims, for compensation for building a fire-proof store-house at the Philadelphia Arsenal for the United States. And in connection with my memoranda, sent at the time, two items of claim were made: 1st, about \$50,000 for extra work;

2d, near same amount for damages for delays, losses, and interest on account of changes, &c.

The original estimate by the government architect for the changes and extra work was something over \$34,000.

The survey and actual calculation of the cost and value of this work at the contract prices, after it was done, as made by four different architects, was an average of over \$43,000, that of the government architect being \$47,000.

The court, after trial, rejected the claim for damages, and allowed that for extra work.

The mistake in the amount of the judgment, which should have been for \$47,000, arose, I am sure, from adopting the architect's prior estimate instead of his subsequent actual calculations of the cost of the work.

My attention was not called to this error until after the judgment had been certified and paid.

I am quite sure that you should have had \$14,000 in addition to the judgment rendered in the case for compensation alone, without any interest or damage.

I am, very respectfully, yours,

JOS. CASEY.

Capt. A. GRANT.

In view of all the evidence, your committee are satisfied that the court, by mistake, entered judgment for a less sum than they really intended to do, and had the attention of the court been called to it at the time would have corrected it.

Your committee therefore report back the accompanying bill, and recommend its passage.

L. C. CANTWELL.

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APRIL 5, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. LINDSEY, from the Committee on Claims, submitted the following

## REPORT:

[To accompany bill S. 307.]

*The Committee on Claims, to whom was referred the bill (S. 307) for the relief of L. C. Cantwell, with accompanying papers, have had the same under consideration, and report:*

That the report of the Senate Committee on Claims sets forth the facts in the case, as fully supported by the testimony, and they adopt the same as part of their report, and recommend the passage of the bill in concurrence.

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*The Committee on Claims, to whom was referred the bill (S. 1827) for the relief of L. C. Cantwell, with accompanying papers, have duly considered the same, and submit the following report:*

The claimant, L. C. Cantwell, is and for many years has been the postmaster at Richmond, in Ray County, Missouri, and is a gentleman of high character and standing. Prior to June 1, 1878, he had built at his own expense a very comfortable building of frame-work for the post-office, and had fitted it up in first-rate style for the convenience of the business and patrons of the office. On June 1, 1878, about 4 p. m., a cyclone of most wonderfully destructive power swept over and through Richmond, destroying everything in its pathway, killing a large number of citizens—men, women, and children—and wounding many more. The post-office building was in its pathway and totally destroyed, together with its contents. The building was smashed into kindling wood, and the contents of the office, money-order funds, postage funds, stamps, stamped envelopes, postal cards, &c., were taken up by the cyclone and almost totally destroyed. Some letters were found over 13 miles distant from the office. The Post-Office Department has given Mr. Cantwell credit for the losses of stamps, stamped envelopes, &c., sustained. Mr. Cantwell at once made a full report of all losses to the Post-Office Department, and then made a detailed report under oath of the items of his losses, in response to a call from the department; then the department sent out to Richmond, Mo., a special agent, Warren P. Edgerton, to make a personal investigation and report, and who did make a full report. Upon the application of your committee copies of all these letters, reports, and affidavits were furnished, with an accompanying letter from General Brady, Second Assistant Postmaster-General. From these it is found that Mr. Cantwell had on hand in said building \$94.06 of money-order funds and \$255 of postage funds, making \$349.06 in all, and that of this amount \$21.60 were recovered, leaving the sum of \$327.46 as the balance of the money-order and postage funds totally lost and destroyed, and for which he has fully accounted to the Post-Office Department and paid in full, and which should be refunded to Mr. Cantwell.

The bill directs the payment of said sum to Mr. Cantwell, and your committee recommend the passage of the bill.





A. B. MEACHAM.

APRIL 8, 1880.—Committed to the Committee of the Whole House, and ordered to be printed.

Mr. LINDSEY, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 5689.]

*The Committee on Claims, to whom was referred the memorial of A. B. Meacham, have had the same under consideration, and report thereon as follows :*

In 1873, the claimant, A. B. Meacham, was appointed by the then Secretary of the Interior of the United States as a member of a commission to negotiate a treaty of peace with the Modoc Indians, located in the lava-beds of California, and who were at the time engaged in hostilities against the United States. Acting under official instructions, the said commission, of which the claimant was chairman, entered upon the discharge of its duties. An armistice was effected, and such negotiations between said commission on behalf of the United States, and Captain Jack, so called, on behalf of said Indians, were instituted. At a meeting on the 11th of April, 1873, of said commission and Modocs, in furtherance of said object, the Modocs attacked the commissioners, killing General Canby, who was in command of the United States troops at that place, and one Dr. Thomas, both of whom were members of said commission, and severely wounding the claimant, desisting only when they believed him dead, and stripping him of his clothing and partially scalping him. He received seven pistol and rifle shot wounds, five of which were very serious, and at the time regarded fatal. He has been under constant medical advice and treatment, and still suffers severely from the effects of them, and, in the opinion of his medical attendants, always ill. The effect has been to totally incapacitate him from pursuing his usual or other occupation, excepting at intervals when he has engaged in writing and delivering lectures. The claimant, with his family, consisting of his wife and three children, resided in the State of Oregon, here he was engaged in a lucrative and honorable business. He was twice selected as a presidential elector from his State, and for several years was a superintendent of Indian affairs.

Your committee deem it immaterial for the purposes of this case to inquire as to the motives or reasons which actuated the Indians in making this deadly assault upon said commission. They were engaged in a most laudable mission, and gave no cause of offense. Whatever complaint or grievance the Indians might have against any one else, they could find none in the conduct or acts of said commission that would justify so treacherous and fatal an assault. The claimant received the injuries, from which he so severely suffers, in the line of duty, and whilst

actually performing the directions of his government. Your committee are of opinion that it would be but an act of simple justice that some reparation should be made to the claimant. It is a difficult matter in such cases to estimate or determine what would be a fair or proper amount to award, or what will compensate for the loss of health or life.

Your committee without expressing any conclusion on this point, are of opinion that the government should compensate in some degree the injury sustained, and report the accompanying bill allowing the claimant the sum of \$5,000.



THOMAS COTTMAN.

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APRIL 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. LINDSEY, from the Committee on Claims, submitted the following

## REPORT:

[To accompany bill H. R. 5690.]

*The Committee on Claims, to whom was referred the petition of Thomas Cottman, have had the same under consideration, and submit the following report:*

The claimant asks for compensation as a member of the Thirty-eighth Congress. It appears that the petitioner was a member of the State convention of Louisiana which passed the ordinance of secession; that he opposed the secession of the State to the utmost of his ability; that after the passage of the ordinance he attested it by his signature, but strenuously opposed every measure taken tending to its enforcement.

After the war commenced he was volunteer aid on General Wool's staff, at Baltimore. In October, 1862, he returned to New Orleans and assisted in the reorganization of the State government, under the direction of President Lincoln; designated the appointment of civil officers in certain parishes in the State, under the authority of General Shipley, military governor; returned north in 1863, and was entrusted by Mr. Lincoln with missions to parties in Mississippi in reference to the restoration of the Union. He was elected to the Thirty-eighth Congress, at the regular time for the Congressional election, to represent the second district of Louisiana. Judge A. T. Field was returned to the same Congress at the same time for the first district. They were both enrolled by the Clerk as members, and participated in the organization of the House. Afterwards a question was raised as to the right of Louisiana to representation, and the matter was referred to the proper committee, and the case of Mr. Field agreed upon as a test case. The decision was adverse to the right of the State to representation, and they were excluded. Mr. Field was paid \$2,000 by a resolution of the House.

Mr. Cottman is a physician by profession, and made no application at the time for compensation, but later proceedings were initiated by Mr. Field to procure compensation for his colleague also, but died before action was had.

It is proper to state that Field, Benzano, Wells, Taliaferro, and Hahn were elected to the following—the Thirty-ninth—Congress, but were not admitted to their seats, though each of them was paid the sum of \$2,000.

Dr. Cottman remained in Washington for some time prosecuting his claim to a seat, and undoubtedly had probable ground for his claim, and, under the uniform usage, was entitled to compensation, and com-

pensation was voted to all the parties similarly situated except him. He was then a man of fortune, and the compensation was not a matter of necessity with him. He is now far advanced in years, and is poor. Your committee think he is entitled to the same compensation received by his colleague and the others elected to the Thirty-ninth Congress (\$2,000), and they report the accompanying bill, and recommend that it do pass.

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OLIVER MOSES.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. LINDSEY, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 5691.]

*The Committee on Claims, to whom was referred the bill (H. R. 5691) for the relief of Oliver Moses, of Bath, Maine, owner of the ship James A. Wright, having considered the evidence submitted to them in the case, report that they find the following facts:*

The ship James A. Wright was wrecked on the west coast of the Hebrides, Scotland, November 17, 1877. The ship was a total loss, and the crew were left destitute, with no means to provide for themselves or to enable them to return home.

The place of the wreck was within the consular district of Glasgow, and about — miles distant therefrom.

Captain Morrison, the master of the ship, on its credit, furnished money to relieve these wrecked and destitute seamen, in providing subsistence and passage to a port in the United States. Bills were made and receipts given in all cases, and the sums paid appear to have been necessary and reasonable.

The bills were certified as paid by Captain Morrison by S. F. Cooper, the American consul at Glasgow. Captain Morrison states "that on his application to the consul at Glasgow Mr. Cooper declined to reimburse him, saying that he had no funds at hand, and that I (Captain Morrison) must send in my account and vouchers, that he authenticated, for the owners of the ship to collect from our government."

Upon application by Mr. Moses to the Treasury Department for reimbursement of the expenses thus incurred, the Fifth Auditor, under date of January 19, 1878, replies: "I have to state that the law providing for the relief of destitute American seamen does not authorize the settlement of accounts at the Treasury with the masters or owners of vessels or amounts paid by them for relief of their crews. Consular officers of the United States are authorized to afford relief to American seamen and destitute within their consular district and to forward their accounts and vouchers therefor to the Treasury Department, and the expenses so incurred are reimbursed to such consular officers in the manner prescribed by law."

Your committee are of opinion that the right of Mr. Moses to reimbursement clearly falls within the spirit if not the letter of the law providing relief for destitute seamen of the United States (sec. 4577 Rev. stats.), and therefore report back the bill with the recommendation that it do pass.



SABIN TROWBRIDGE.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5692.]

*The Committee on Claims, to whom was referred the petition of Sabin Trowbridge, postmaster at Lee Centre, State of Illinois, for relief from loss of postage-stamps stolen by burglars, having had the same under consideration, ask leave to report the following facts and recommendation:*

It appears from the evidence submitted to the committee that the post-office at Lee Centre was broken open and entered by burglars on the night of the 10th day of November, 1877, and postage-stamps to the amount of \$214 were stolen, no part of which have been recovered.

The evidence shows that the post-office was kept in a substantial wooden building with double doors in front, each door of two thicknesses of plank, and blinds to all the windows, with inside fastenings. The entrance was effected by boring and cutting out the catch to lock of the front door, which was heavy and strong.

The stamps stolen were in a new safe manufactured by Hall's Safe and Lock Company, of Cincinnati and Chicago, with combination lock. The safe was removed from its place back of the delivery of the post-office to the middle of the floor, and there drilled and blown open with gunpowder.

The robbery was made public immediately, and every effort appears to have been made to detect and apprehend the burglars and recover the stamps, but without success.

A special agent of the Post-Office Department investigated the case soon after the loss, and reported that the postmaster was in no wise to blame for the robbery of the post-office.

In view of the foregoing facts, the committee report the accompanying bill for the relief of said Sabin Trowbridge, and recommend that it do pass.





DANIEL J. BENNER.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2464.]

*The Committee on Claims, to whom was referred petition and bill for relief of Daniel J. Benner, having had the same under consideration, report:*

That during the late war Daniel J. Benner was an officer of the Fifteenth Illinois Volunteers, and in the fall of 1861 was assigned to duty at Saint Louis, Mo., as acting commissary of subsistence; that during the last quarter of 1861 and the first quarter of 1862, he disbursed various sums of money, all of which have been properly accounted for at the Treasury Department, except \$417.80 of money received by said Benner from Lieut. J. W. Mott, January 7, 1862. For this sum no vouchers are on file, as required by the rules of the Treasury Department, and it stands charged as due from said Benner.

Lieutenant Benner, in an affidavit filed in the Treasury Department, states that his returns for the fourth quarter of 1861 were made out, approved, and sent to the Treasury Department at Washington. That he was then encamped at Otterville, Mo., in the first division of General Pope's command, Col. Thomas J. Turner, Fifteenth Illinois Infantry, commanding. That the command continued in camp till February 7, 1862, when it was ordered to Jefferson City; there the division was broken up, and soon after Lieutenant Benner joined his company at Fort Donelson. That he made up his returns to the time he closed his connection with the Subsistence Department, which was a short time before the battle of Pittsburgh Landing. That said returns were examined and approved by the commanding officer, and, with the vouchers, were deposited in the mails for transmission to Washington; that this return and the vouchers showed the disbursement of all money received by him except \$2.40, which he admits is due the government. There is no evidence that the return and vouchers were received at the Treasury Department.

The papers retained by Lieutenant Benner, and which, if preserved, could enable him to duplicate his return and vouchers, were kept by him in a box in his tent. That at the battle of Pittsburgh Landing he acted as aid for General Hurlbut, commanding the fourth division of the Army of the Tennessee, and had all of his official and personal papers at his tent at General Hurlbut's headquarters. That the division was forced back and the enemy occupied the headquarters before all the property had been secured. That the box containing his commissary and other papers was left in the tent, taken possession of by the enemy,

and when it was retaken the next day, it was found that many of the papers had been destroyed, including those showing the disbursement of this money. It appears that the first division, of which Lieutenant Benner was acting commissary, was composed of two brigades and there was attached to the division part of the First Missouri Cavalry and Third Indiana Battery. The issues to the division by Lieutenant Benner from January 1, 1862, to February 7, 1862, as appears from a book of issues preserved, included, among many other articles, 67,773 pounds fresh beef. This last item involved a large amount of labor, as the beef cattle were received on foot, and men were employed to feed and watch them, slaughter them, and part of the time deliver the beef in quarters in the camp, two miles distant from the slaughter-house. It is claimed by Lieutenant Benner that the \$417 he is charged with was paid out in providing and distributing subsistence under orders of his commanding officer, and that his accounts were carefully examined and approved by said officer and forwarded to Washington. That the loss of his papers at Pittsburgh Landing prevents his duplicating vouchers or giving exact statement of disbursements. That Colonel Turner, who approved his accounts, died several years since. That Sergeant Elwell, who assisted in making up the accounts, was killed at Pea Ridge; and the claim is largely sustained by the oath of Lieutenant Benner.

A statement by Major-General Hurlbut is filed in the case, showing that Lieutenant Benner at the time of the battle of Pittsburgh Landing was acting quartermaster of division, and that his official and other papers were in his tent at headquarters and were captured and in the hands of the enemy during the night. That many papers and documents were lost, and that Lieutenant Benner at the time complained of the loss of valuable papers. General Hurlbut in his statement says of Lieutenant Benner, "I have the highest confidence, from long trial, in his capacity and integrity, and do not believe that he is in any form justly indebted to the United States."

In consideration of the foregoing facts the committee recommend the passage of the accompanying bill, authorizing the accounting officers of the Treasury Department to settle and adjust the accounts of said Daniel J. Benner upon equitable principles, and allow such credits as shall seem just and reasonable from the best evidence the nature of the case will admit.

CHARLES C. REYNOLDS.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5693.]

*The Committee on Claims, to whom was referred the petition of Charles C. Reynolds, of Milford, Kosciusko County, Indiana, would report thereon:*

That the petitioner asks to be paid for one hundred and eighty dollars' worth of postage-stamps stolen from him while he was acting as postmaster. As proof in the case, he submits his own affidavit, alleging that he was the owner of a drug-store in which he kept the post-office, and that on the night of the 22d day of April, 1875, his store was entered by burglars, his safe blown open, and stamps to the amount above named stolen and carried away; that the said stamps were placed in the safe by him and securely locked up, and that the loss did not occur by reason of any neglect or connivance on his part. His affidavit is supported by those of two others, who allege that they are residents of Milford and have known the said Charles C. Reynolds for six years previous thereto, and testify to his good character, and that they know the fact of the drug-store having been entered and his safe blown open, they having examined the premises on the morning of the 23d day of April, 1875, and they believe it to have been done by professional burglars. They further state that they believe the facts as stated by him to be true, and that they are not in any way interested in this claim. Inquiry at the Post-Office Department shows that the amount of loss reported by the said postmaster, immediately after the burglary, is about fifteen dollars less than the amount now claimed. The committee report back the petition, with the accompanying bill, and recommend that the bill do pass.



LOUIS VOLIN.

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APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2749.]

*The Committee on Claims, to whom was referred the petition of Louis Volin for compensation for wood cut under contract with the United States Quartermaster's Department, having considered the same, submit the following report:*

The facts submitted in evidence, and about which there is no dispute, are these: On the 25th of May, A. D. 1872, Louis Volin, of Yankton, Dak., entered into a contract with the proper officer of the United States Quartermaster's Department for the delivery of 850 cords of wood within the inclosure of the post at Grand River Agency, Dakota Territory, at a stipulated price of \$4.75 per cord, the wood to be delivered on or before January 1, 1873.

By the Vith article of said contract—

It is expressly stipulated that Louis Volin shall have full and sufficient authority to cut wood upon any part of the military reservation outside of a circle described, with a radius of half a mile from the adjutant's office, or upon any public lands adjoining the military reservations not appropriated by law to any other use.

And by Article VII it is provided that the contractor—

Shall be entitled to military protection whenever from the hostilities of the Indians shall be deemed necessary by the post commander, whose duty it shall be to furnish such protection to the extent of his power; this stipulation to give no foundation for any claim against the government for damages from Indians, or any detriment arising from their depredations or hostilities.

At the time when the contract was made between the above-described parties, it does not appear to have been known to either of them that the post at Grand River Agency was not situated on a military reservation, but upon the Great Sioux Indian Reservation. Such, however, appears to be the fact; and General Card states in his report that there was no military reservation at the Grand River Agency, and, consequently, no public lands adjoining the military reservation," upon which the contractor might, by the terms of the contract, enter and cut the wood required.

Opposite the Grand River Agency, about 4 miles distant from the post, and within the Sioux Reservation, a wood lot was found from which 250 to 500 cords of the quantity provided by the contract might have been cut; but it appears that a band of Yanktonais Indians had pre-

viously encamped on this spot and needed this wood for domestic purposes, and that they were thus encamped by permission of the proper authorities of the United States. Captain Collins, the commandant of the military post at the agency, although promising the contractor military protection to the extent of his power while fulfilling his contract, at the same time advised him to go elsewhere to cut the wood, since the Indians, if he persisted in cutting wood near them, would very likely maim his draught animals or do him other damage. Besides, the commandant of that post did not have sufficient force to spare for his protection.

Volin, the contractor, accepted the advice given him by Captain Collins, and proceeded elsewhere to cut the wood for the post. The entire quantity, 850 cords, was delivered, as stipulated in the contract, and the price agreed upon, \$4.75 per cord, paid to the contractor, but the sum of \$1.75 per cord, in addition to the contract rate demanded by him, on account of the increased cost of hauling the wood, was refused. General Card reports that the distance which the contractor was thus obliged to haul this wood is 14 miles, and that the increased cost for this service was \$1.50 per cord.

The theory upon which this claim rests is that the wood cut on the public domain is the property of the United States, and that the contract is simply for labor and personal services. The contractor, at the request of the proper officer of the United States, cuts and hauls the wood. In *Spencer v. The United States* (10 Court of Claims, 255), the chief justice in announcing the opinion of the court, said:

It could, we suppose, hardly be doubted that where a portion of the Army of the United States is quartered upon the public domain, where wood could not be obtained except therefrom, the proper officers might lawfully employ individuals to cut wood from the public land for the use of the military forces so situated. In such case, the persons so employed would be paid, not for the wood, but for cutting and hauling it.

The claim of the contractor for the extra labor thus required, in order to enable him to deliver the whole quantity of wood, is dependent upon this fact, viz: Did the officer of the United States at the Grand River Agency, with full knowledge of the increased cost of the service, assent to the hauling of the wood the distance described? If so, then it is plain that the government is bound to pay for such extra labor.

In *Grant v. The United States* (5 Court of Claims, 72), the court said:

If the changes necessarily imply an increased price, and he [the agent of the United States] expressly authorizes, or silently, but with full knowledge, assents to them, he is bound pay for them.

Upon consideration of all the facts, your committee is of the opinion that the contractor, with the full knowledge and consent of the military commandant, and by his advice, proceeded to cut and haul the wood from the locality mentioned, and that the cost of such extra labor would be in excess of the price stipulated in the contract. Nor does the fact that a portion of this wood might, under certain conditions, have been cut 4 miles from the post on the land where the Indians were encamped prove that the compensation for such extra labor should, to that extent, be reduced, and payment only be made for the number of cords which would thus have been hauled from the distance of 14 miles. Upon this point your committee is of the opinion that good policy, no less than a scrupulous regard for treaty obligations, required the military authorities at the Grand River Agency to protect the Indians in their right to cut wood at the place of their encampment for domestic purposes, and the

evidence shows that the quantity of wood there would be all required by them for such purposes.

In view of all the facts of this case, your committee think the claimant entitled to the increased cost of hauling 850 cords of wood for the distance, and at the rate reported by General Card, amounting to the sum of \$1,275, and recommend the passage of the bill herewith reported.

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SAMUEL O. UPHAM.

APRIL 8, 1879.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3245.]

*The Committee on Claims, to whom was referred the bill for the relief of Samuel O. Upham, of Waltham, Mass., have considered the same, and respectfully report:*

This is a claim for loss occasioned to the complainant as postmaster at Waltham, Mass., by the robbery of his office on the night of September 9, 1879.

The facts in this case are as follows: The claimant received the commission, under which he now acts as postmaster, November 13, 1877, and for eight years previous thereto had also been postmaster of said town. During all his service he had faithfully performed all the duties of the office to the satisfaction of the Post-Office Department. On going to his office on the morning of September 10, 1879, he found that during the previous night some one had, by prying open the shutter and breaking the fastenings and forcing open the window, effected an entrance into the post-office, which was located in a secure building in the center of the town. "The safe was found with the door blown open, a burnt fuse was sticking out of the keyhole, the front plate of the door had been blown off from the front part, showing it had been forced open by a violent explosion." All the articles in the safe were carried off, except a blank money-order book, which was found therein, charred by fire. The following is the account of the property thus lost:

500 one-cent stamps .....	\$35 00
500 two-cent stamps .....	10 00
400 three-cent stamps .....	132 00
900 five-cent stamps .....	45 00
600 six-cent stamps .....	36 00
150 ten-cent stamps .....	15 00
100 fifteen-cent stamps .....	15 00
25 thirty-cent stamps .....	7 50
postage due stamps .....	62 50
3-cent pieces .....	25 00
change .....	25 00
money-order funds .....	3 10

Total value of property lost ..... 414 10

Claimant testifies "that the above contains only the account of full sheets of stamps stolen, and not the account of broken sheets, many of which must also have been taken, so that my loss must be considerably larger than as above stated."

The police of Waltham and Boston were immediately notified, and did all they could to discover the burglars, but without success. The safe was of the usual construction of portable safes, and was as strong and secure as such safes generally are.

The report of the special agent of the Post-Office Department is as follows:

No. 30737—B.]

BOSTON, December 20, 1879.

SIR: I have the honor to report on case No. 30737 B, which relates to the robbery of the post-office at Waltham, Mass., on the night of September 9, 1879, that in making the investigation I found that the burglars effected an entrance by forcing open the shutters to one of the windows, broke the glass, and then removed the fastening, and that then blew open the safe with powder, and took from the same \$400 worth of postage-stamps, \$50 in postage funds, and \$4 of money-order funds; making a total loss of \$454. From the investigation made, I am satisfied that the postmaster, Mr. Upham, used due care in the protection of the stamps and money entrusted to his keeping. The safe was considered a good one, and the office was as well protected as the nature of the building would permit. Diligent search has been made by the local police of Waltham and myself. Mr. Upham has also done his best to find the depredators, but up to this time without result.

Very respectfully,

CHARLES FIELD.

*Special Agent Post-Office Department.*

D. B. PARKER, Esq.,

*Chief Special Agent, Post-Office Department, Washington, D. C.*

It will be observed that the agent fixes the loss at the sum of \$414, whereas the above account fixes it at \$414.10. It is probable that this discrepancy arises from the agent's estimating the amount of "broken sheets," which are not included at all in this claim.

The character of the claimant as to efficiency and honesty, and the use of due diligence by him in the care of his office, and the circumstances of the robbery are established beyond a question by the affidavits of the selectmen of Waltham and other prominent and reputable citizens.

The selectmen testify "that no precautions short of a man on guard or the use of such a safe as the business of said office does not warrant to be had, would suffice to protect him against loss by the cunning of skilled burglars, the class which must have preformed the burglary above referred to."

It is evident that the claimant took the same care of the property of the government that a man would ordinarily have taken of his own property, and used all due and reasonable diligence in its protection, and that due diligence was used in endeavoring to recover it and to arrest the burglars. The committee are of the opinion that the claimant should be relieved from the loss occasioned by said robbery. The committee therefore report back the accompanying bill, and recommend that the same do pass.

JOSEPH WESCOTT & SON.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5694.]

*The Committee on Claims, to whom was referred the "petition of Joseph Wescott & Son for relief from loss arising from mistake in a contract with the United States," have considered the same, and respectfully report:*

This is a claim for loss by the claimants as contractors for furnishing the cut granite required in the construction of two stairways in the east wing of the State, War, and Navy Department building in Washington.

The following are the facts in the case:

By advertisement, dated May 21, 1877, Thomas L. Casey, lieutenant-colonel, Corps of Engineers, U. S. A., in behalf of the United States, called for proposals for the cut-granite for the two stairways in the east wing of the State, War, and Navy Department building, the two stairways being those running upon each side of the central hall in said wing, and comprising on each side, from the sub-basement story to the attic story, six separate flights of stairs, making in all twelve flights. The usual specifications and plans describing the character of the work were sent to those who desired to bid for the contract, and, among others, to the claimants, Joseph Wescott & Son, of Portland, Me., who were engaged in the business of getting out and cutting granite at a quarry in ———, in that State.

By the terms of said advertisement the proposals were to be opened and considered at noon of June 20, 1877. The claimants made an estimate of the amount for which they could take the contract; and George P. Wescott, one of the firm, went to Washington, June 19, for the purpose of presenting the proposal of the claimants for the work. The claimants, several days before, had returned to the department in Washington, at its request, the set of plans from which they had made their estimates; so that after such return they had no means of verifying these estimates.

The claimants had made up their estimates at Portland in the following manner:

	Steps.
Four flights of stairs on each side (first story to attic story) of 29 steps each,	
viz .....	232
One flight of stairs on each side (basement story to first story) of 23 steps each.	46
Total number of steps .....	278

278 steps, at \$45 each .....	\$12,510 00
One flight of stairs on each side (sub-basement to basement story) of 17 steps each (34 steps), at \$15 per step .....	510 00
6 landing-stones on each side, viz, 12 landing-stones, at \$150 each .....	1,800 00

Estimate which claimants intended to make for the work..... 14,820 00

The committee have in their possession the original figures, made in pencil by claimants in making up their estimates, and which, it is testified, have been unchanged since they were first made; which figures show the estimates to have been originally made as above stated.

The principal issue in this case, it may here be said, is as to the the claimants' making a mistake in their estimate of the number of landing-stones to the flights, it afterwards turning out that they had to furnish more landing-stones than they had made their calculations for, and it appearing by the above original estimates that they had only calculated for one landing-stone at the top of each flight (that is, one at the basement, first, second, third, fourth, and attic stories).

When George P. Wescott, after his arrival in Washington as aforesaid, went to Colonel Casey's office in the morning of June 20, the day of the opening of the bids, he applied to one of the clerks in the office to be allowed to refer to the plans again, and said Wescott testifies as follows concerning this matter:

I took from my pocket the paper on which I had made out our estimate and explained to him that we had returned to his office the set of plans sent us, and we were not sure if we had correctly counted the number of stones on the plan or not; that while the plan of the several flights of steps was clear to us, that it was not so with the landing-stones, and that in the bid we had made we had included but one stone for each flight, which was at the top; his reply was, "You are in error, there is one at the bottom of each flight as well as at the top," and he designated the stone on plan. I replied, "This is a most fortunate discovery, as these stones are valuable as this error will add \$1,200 to our bid, and it was lucky for us that we had not sent our bid by mail." After correcting the figures on my memorandum I counted up the plan and compared it with my estimate. Not feeling sure that I was correct I said, "Now as you have found one error in my figures, while I think I have all the stones, yet to make it sure, will you kindly count up the plan and let me check each platform and flight of steps;" he took the plans and counted each stone and his count agreed with my estimate.

I again referred to the landing-stone plan, as not having been understood by us, and freely expressed my thanks for the assistance and information he had given me.

Wescott then amended his bid by putting in the landing-stones which, from his talk with the clerk, it appears had been omitted, namely, one additional landing-stone in the first, second, third, and fourth stones at the top of flights, making in all 8 landing-stones additional (making 10 landing stones on each side instead of 6 as before estimated), which were added to his original list, making his bid as finally presented to the department for the sum of \$15,970, made up as follows:

278 steps, at \$45 each, as per the original estimate.....	\$12,510 00
34 steps, at \$15 each, as per the original estimates.....	510 00
18 landing-stones, at \$150.....	2,700 00
2 landing-stones (basement) .....	250 00

15,970 00

It will thus be seen that, although his bid was made only in the aggregate sum, \$15,970, yet in making it up there was only included in the estimate 20 landing-stones, whereas in reality there were 21 landing stones on each side or 42 in all, making 22 landing-stones, of which he had taken no account, as will be hereafter described.

Wescott then immediately sealed up his bid, and at noon of the same day (June 20, 1877,) presented it, agreeing to take the contract for \$15,970.

There were 21 bids made for the work, ranging from \$41,068 down to the claimant's bid of \$15,970. which was the lowest bid, with the exception of one for \$11,820 which did not conform to the specifications.

In the language of Colonel Casey (see appendix to this report), "they were the lowest bidders, who furnished with their bid a sample of stock and cutting in conformity with the specifications."

Four of the bids were between \$30,000 and \$40,000; ten of the bids between \$20,000 and \$30,000, and four of them between claimant's bid of \$15,970 and \$20,000.

The claimants were notified June 28, 1877, of the acceptance of their bid, and the contract of date July 6, 1877, to do the work in accordance with the specifications, was signed by them. In returning the contracts, Geo. P. Wescott wrote to Colonel Casey as follows:

When the writer was in Washington the 20th ultimo, your architect informed me that the landing-stone would differ from those now set in the south wing of the building. In order to avoid errors in cutting we would ask you to furnish us with drawings of these stones.

July 11, Colonel Casey replied, that—

The landing-stones are to be cut precisely as shown on the drawings you have, except the notching and fitting on beams, columns, &c., which as stated in the specifications, will be done by the United States.

In order to save you any confusion from the numerous lines on the regular plans, respecting this fitting, a tracing is inclosed herewith, showing the landing-stones as you are to cut them. Their thickness for the different floors is given on the regular plan.

The claimant testifies, that—

As soon as the tracing was examined, I saw at once that we had not included all the stone in our bid, and that instead of two landing-stones, top and bottom of each flight, there was a full course of four stones to each floor.

By the term "landing-stones" is meant the stones in the landings between flights of stairs.

In his first estimate claimant thought that the top of one flight ran against the bottom of the next; so that only one landing-stone to a story was called for, which would act as the top landing-stone for one flight and the bottom landing-stone for the next. In his corrected estimate, learning that one flight did not commence at the place where the other ended, he estimated for two stones in each story, one at the top of one flight, and the other at the bottom of the next. When the last tracing came to him, he learned for first time that there were not only two landing-stones at every story or landing above the basement story, one at the top and one at the bottom of each flight, but that a course of tones (which were also called landing-stones) was also continued around the "well-hole" of the stairs, thus connecting by a course of stone the top landing of one flight with the bottom landing-stone of the next. These intermediate landing-stones were large stones, two in each of the first, second, third and fourth stories and three in the attic story, making 11 stones on each side and 22 extra landing-stones in all.

One of the grounds of this claim is that these extra landing-stones should in justice and equity be paid for.

Claimants let the matter rest until Colonel Casey came to Portland (August 21), when they called it to his attention and urged upon him, that—

It was fair and equitable that the government should reimburse us for all the stone delivered outside of the number included in our estimate, and we now claimed additional pay for two landing-stones.

He replied "that he was sorry such omission had occurred in making up our bid, but that at this time he could not entertain nor in any manner consider our claim for payment for these stones; that they were a part of the plan and specifica-

tions and that we were under contract with good and sufficient bonds to furnish all the stone required to complete the job, and he must and should hold us under our contract to deliver these stone."

At this interview he said, "On my return I will send you an order to cut thirty-two small stones required for the landing-stone course, and for which you shall be paid such a price as may be found reasonable and proper."

And as such an order was subsequently given and 24 of such small stones were furnished, entirely independently of the contract, and have not been paid for, the question as to these small stones may be dismissed with the statement that the claimant should receive pay therefor and that such payment is included in the bill reported herewith.

The claimants thereupon proceeded to carry out their contract and faithfully performed the work to the satisfaction of the government, though it would have been to their pecuniary advantage to have abandoned the work and forfeited their bonds, which were given in the sum of \$5,325.

The following evidence appears in the letter of Colonel Casey, hereto annexed:

The senior partner, Capt. Joseph Wescott, after having cut one of the two stairways, called upon me and stated that owing to their loss in this cutting, he was of a mind and about determined to throw up the job, and forfeit the amount of the bond together with the retained 10 per cent. of what they had already earned. I advised him not to do so, as if he did he would put himself in the position of a failing contractor, and so deprive himself of an opportunity to have his bids considered upon any other work that might arise, and that it would be better for him to go on in the face of known loss and appeal to Congress for relief; and that if he could show to Congress, fair and square, that he was necessarily expending or had expended more than he was to receive, to my judgment, his loss would be made good to him.

A full itemized account of the actual expenditures by the claimants was put in as evidence before the committee, and those expenditures amounted to the sum of \$26,729.57. This was the actual cost and expense to them, without any profit.

The following, then, is the account of the granite which they furnished (taking it at the prices on which they based their estimates) and of the moneys which they received:

<i>Granite furnished.</i>		<i>Money received.</i>	
278 steps, at \$45 each.....	\$12, 510 00	Cash for opposite item No. 5..	\$15, 969 30
Basement steps .....	510 00	Item to square account .....	"
18 landing-stones, at \$150 ....	2, 700 00	Cash for opposite item No. 6..	1, 171 30
2 landing stones (basement)...	250 00		
	15, 970 00		
Under cutting basement stairs			
as per special bargain.....	1, 171 80		
	17, 141 80		17, 141 30
<i>Extra granite furnished.</i>			
22 landing-stones, at \$150 ....	\$3, 300 00		
24 small stones, as per special			
agreement, at \$7.....	168 00		
	3, 468 00		

The loss of the claimants by their mistake in estimating as to landing-stones amounted to the sum of \$3,300, taking the landing-stones omitted from the estimates at the same valuation as those included therein, and the value of the small stones the committee estimate at \$7 each, allowing a reasonable profit on the making of such small stones, since the

claimants were entitled to such profit, the stones having been specially ordered by the government and to be paid for *quantum meruit*.

The claimants then paid out in money .....	\$26,729 57
And received .....	17,141 80
And their loss was .....	9,587 77

In regard to the mistake concerning the landing-stones, it was a mistake which any person, although in the exercise of reasonable care, might have made, and the claimants cannot be regarded as guilty of negligence in making it, especially in consideration of the fact that one of them went over the count of stones in his estimate with the assistance of a clerk in the department, so that both the clerk and the claimant omitted to notice these stones. The claimant, as an additional measure of precaution and to be sure that he was correct, just before handing in his bid, not only counted over the stones on the plan himself, but asked a clerk in the employment of the government to verify the accuracy of his count, which was done. Claimant thus seems to have taken every precaution which any reasonable man could be expected to take.

An architect or draughtsman or other skillful expert in regard to drawings, might perhaps have told from the drawings in this case that these landing-stones were to be furnished, but the drawings are complicated; there are things shown upon them which were not to be furnished by the contractors, and any business man, having it in mind that he was called upon to furnish estimates for flights of stairs, might well, and perhaps in most cases would, omit altogether to notice the landing-stones or conclude that they were not to be included, since they form no part of the stairs themselves.

The term "landing-stone" was misleading. One would naturally think that the term "landing-stone" meant *landing*-stone; the stone upon which one lands at the top or bottom of a flight, but these two landing-stones on each flight were distinct from the true landing-stones in this sense of the word; merely formed a rim or casing around the well-hole and were actually a part of the hall or entry and in no respect of the stairs, as an inspection of the stairs will show better than any explanation.

While a man in the exercise of due care might misunderstand the plan in this respect, he likewise and for similar reasons might not notice that the specifications called for these landing-stones in question.

The specifications are stated in the heading to be "for the cut granite for two stairways," and the only reference specifically therein to the landing-stones is "the landing-stone shall be cut full section," &c., and the contract (not signed until after the bid was accepted) refers to the landing-stones thus, "together with the landing or platform stones crowning the cornices which connect with the flights of said stairways."

Clearly the claimants were bound by this contract to furnish these landing-stones, and an expert, by thorough examination and analysis of this contract and plans, might have seen that the landing-stones were called for, but any ordinarily careful man might have made the omission which these claimants made.

These stones, besides, were of a peculiar construction, being circular and every step of a flight being different from the others, and being cut with a different curve or line so that the workmanship was difficult and must be exact. (See letter of Colonel Casey, annexed.)

As to the reasonable cost or value of these landing-stones and of the stairs, it is evident that the claimants and all the lower bidders on the

list bid for the work, not for profit, and to keep their men at work and only to pay actual expenses. (See letter of Colonel Casey.)

These stairs cost \$26,729, while the stairs of similar and no more expensive or difficult construction in the south wing of the same building cost about \$66,000. "The petitioners furnished under their contract, stairs rising one story higher than those of the south wing, involving about one-fourth more work; at the rate of cost for the south wing stairs, those of the east wing would come to about \$82,500." (See letter of Colonel Casey.)

The committee find that the following facts are sustained by the evidence.

1. The claimants performed their contract to the satisfaction of the government.

2. The claimants expended in the performance of the contract \$26,729.57, and received on account thereof, \$17,141.80, and suffered a loss of \$9,587.77.

3. The claimants by mistake, and without any culpability on their part in taking the contract omitted to conclude in their estimate 22 landing-stones and 24 small stones, all of the aggregate value of \$3,468.

4. The above prices, both for the whole job, and for the stones, are reasonable.

This claim may be considered as twofold.

1. The claimants ask that they may be allowed the amount of their loss on account of the contract, namely, the sum of \$9,587.77.

2. The claimants ask that they may be allowed the amount of their loss on account of omitting from their estimate by mistake, the value of certain stones, which they furnished to the government, namely, the sum of \$3,468.

As to the first claim, the committee are of the opinion that it ought not to be allowed. It rests simply upon the ground that the claimants took the contract for a certain piece of work, and that, having lost money upon such contract, the loss should be made up to them. Undoubtedly the work was of a difficult and unusual character, and the claimants in making the contract may not have appreciated the difficulty and expense of cutting the stone for stairs of this peculiar construction. It is also clear that the cost of this work to the claimants (viz, \$26,729.57) may, under all the circumstances, be regarded as a reasonable cost, properly and unavoidably incurred.

Nevertheless, regarded simply as a loss in the execution of a contract, such loss should not be made up to the parties by the government.

If a party takes a contract to execute work for the government or an individual, and is under no mistake as to the terms of the contract, or the extent of the work to be done, it is clear that he has either legally or equitably no redress on account of the loss of money in executing such contract, even though he did not think the work would be so expensive, and did not appreciate its difficulty and expected that the job would be profitable to him. If he was under a mistake of opinion, committed an error of judgment, made a mistaken estimate of costs and profits, he can obtain no relief. It is *damnum absque injuria*, and he must suffer the loss. A party cannot take a contract and throw all the risk thereof upon the government by pocketing the profits, if there are any, and calling upon the government to make good all losses.

In such case, contracts would be useless to the government and not worth the expenditure of paper incurred in writing them. Parties must be held to their contracts, at least where there is no mistake of



fact by the contractor, and although it is true that Congress has sometimes granted relief in similar cases of losses by contractors, and that the not granting such relief often would cause, as in this case, a great hardship to claimants, the committee are of the opinion that the policy of granting relief in such cases is bad.

Cases granting relief are of no force or value, as precedents where they are opposed to a principle, which in itself seems sufficient to decide the case. In other words, where we can decide a case upon principle, we need have no recourse to precedents.

The committee therefore report that the claim for the amount of loss to the claimants in the execution of this contract should not be allowed.

As to the second claim, the committee are of the opinion that the claimants should be allowed the amount (\$3,468), without interest, of their loss on account of omitting, by mistake, from their estimate the value of certain stones as hereinbefore specified, and of certain other stones furnished to the government and not included in their contract.

It is clear that, as to these stones thus omitted, the claimants, in the exercise of due and reasonable care and without culpable negligence, made a mistake of fact in not taking any account of them. It was a mistake which any man might have made and which probably most men would have made, and one against which the claimants took peculiar and unusual precautions, by getting a clerk in the government office to, with them, check off on the list the stones called for in the estimates and plans, and it may be said that the clerk, in the employment of the government, assisted the claimant in making the mistake. Neither the clerk nor the claimant was in fault, because the mistake might naturally have happened to any one.

Reasoning, then, from the fact that this mistake was made without culpable negligence, the claimants are entitled to the relief asked for on account thereof.

If this was a contract between individuals, it cannot be believed that a court of equity under the circumstances would have enforced specific performance thereof. The general doctrine has been stated as follows:

The general rule is that an act done or a contract made under a mistake or ignorance of a material fact, is voidable and relievable in equity. 'No person can be presumed to be acquainted with all matters of fact; neither is it possible by any degree of diligence in all cases to acquire that knowledge; and therefore an ignorance of facts does not import culpable negligence. The rule applies not only to cases where there has been a studied suppression or concealment of the facts by the other side, which would amount to fraud, but also to many cases of innocent ignorance and mistake on both sides. (Story on Equity, sec. 140.)

On the other hand it seems equally clear that a party may, as plaintiff, have relief against a written contract by having the same set aside and canceled or modified, whenever it is founded in a mistake of material facts, and it would be unconscionable and unjust for the other party to enforce it at law or equity. (Story on Equity, sec. 161.)

It seems clear that if this had been a case between individuals, the claimants upon appeal to a court of equity would have been relieved from the performance of the contract.

But the claimants as against the United States could not appeal to a court of equity. They then did the only thing that was possible for them, by appealing to the representative of the government for relief, and not commencing the work until they had so appealed to him. They received the answer that "we were under contract with good and sufficient bonds to furnish all the stones required to complete the job, and he must and should hold us under our contract to deliver this stone," and they were afterwards advised to complete the job and trust to Congress for relief.

There then remained nothing for the claimants to do, notwithstanding their mistake, on account of which a court of equity might have relieved them as against an individual, but to go on and complete the work. They were compelled to do it—they did it honorably and fully, and to the satisfaction of the government, and they are entitled to be paid the loss (\$3,468) which that mistake caused to them.

The committee therefore report the accompanying bill.

#### APPENDIX.

[Office of building for State, War, and Navy Departments, old building, Navy Department, 17th street.]

WASHINGTON, D. C., *January 9, 1880.*

DEAR SIR: Your letter of the 29th ultimo, requesting information concerning the "claim of Joseph Wescott & Son against the United States, for loss occasioned by furnishing the granite for the stairways in the new War and Navy Department building," was duly received, and I have the honor to make the following reply:

1. I believe the character of petitioners as business men and contractors to be most honorable and upright, and that they are worthy of all confidence. I knew the senior partner (Capt. Joseph Wescott) as a granite dealer many years ago, when, on several occasions, I purchased granite of him in the State of Maine for government works in my charge in that locality. I had thus come to so regard Captain Wescott as to make me quite at ease as to the full and faithful performance of the contract in question at the hands of the present firm of Joseph Wescott & Son when it was awarded to them. They were the lowest bidders who furnished with their bid a sample of stock and cutting in conformity with the specifications. (See accompanying copy of abstract of bids received, and approved recommendation to award contract to Joseph Wescott & Son.)

2. The contract was faithfully performed as to quality of stock and cutting. It was dated July 6, 1877, and was to have been completed on November 15, 1877. It was not completed until May 27, 1878, consuming upward of ten months in the performance of the work. It is believed that six months would have been ample time for the work with adequate facilities and management, but I am free to state that the government sustained no damage from this delay in the completion of the work.

3. As to misapprehension on the part of petitioners in regard to the difficulty or extent of the work when they signed the contract, their statement is the only means it seems to me, of obtaining light on that point. I had no suspicion of any such misapprehension at the time of signing the contract, nor did I hear anything of it for a long time afterwards. The junior member of the firm was present at the opening of bids, and, I believe, was in the office an hour or so before, at which time he was advised by my assistant to inspect the similar granite stairways in the State Department building, just across the street. Such examination was also recommended in the printed instructions to bidders accompanying the specifications.

4. Considering the low rate of wages ruling, the lack of work for granite contractors and the competition for this contract at the time it was entered into, as shown by the accompanying copy of abstract of bids received, it is difficult to say that the sum of \$26,704.57 is not too large to be a reasonable price for the work. On the one hand it is to be considered the fact that there were some ten bidders for the work, besides Messrs. Wescott, at sums less than the above amount; while, on the other hand, the difficulties involved in the pattern-making and cutting may not have been fully observed and realized by bidders, if at all careless in their study of the drawings and specifications. It is believed that at least seven of the ten low bidders above mentioned would have been found responsible, and anxious to take the contract, had a lack of lower bidders made it necessary to consider their bids with a view of awarding the contract to either of them. Three of these ten bidders offered to do the work for sums ranging from \$17,000 to \$21,850, while the bids of the remainder approximate closely to the total cost as submitted by the petitioners.

There is no doubt in my own mind that all of these lower bids were bids for *cost* rather than for *profit*, and that the bidders put everything entering into the cost of the work at the very lowest figure that would not entail an actual loss to them. I have no means of estimating with great accuracy the reasonable and proper cost of furnishing this work, as so much depends upon the varying facilities, location, and condition of the quarry of any granite contractor. Taking a rate of wages for cutters at \$2 a day, and allowing no profit to the contractor, I have made an estimate of \$24,370 for the entire job. The books of the Messrs. Wescott should show what the job cost them.

and if their accounts are accurate I believe they undoubtedly expended the sum of \$26,704.57, as stated by them.

5. I consider that \$8 each for the 24 small stones in the landing courses is too high a price. Sixteen of these stones are only 1 foot 8 inches by 1 foot 8 inches by 2 inches, and the remaining 8 stones are only 1 foot 4 inches by 1 foot 4 inches by 2 inches. I believe that they could not have cost the contractors more than \$4 or \$5 each. It is presumed that the cost of these stones has been included in the \$26,704.57. If so, the total sum should be reduced, I think, about \$75. These stones were a part of the original contract, and a part and parcel of the entire job.

6. There is no difference in the style of cutting or finish between these stairways and the similar ones of the south wing of the building. They are not so nearly alike that the same patterns could be used in cutting either of them, but there is no difference in shape or figure that anything short of a very accurate measurement would make apparent. The actual cost of the south wing stairways was, as near as we can arrive at it, some \$66,000. The exact sum is not obtainable, so far as I can learn, owing to the fact that the work was cut along with other granite work for the building, and was paid for upon rolls in vogue under the Treasury Department, the supervising architect of which department, under the Secretary of State, had charge of the work. The accounts are not in this office.

The petitioners furnished, under their contract, stairs rising one story higher than those of the south wing, involving about one-fourth more work. At the rate of cost for the south wing stairs, those of the east wing would come to about \$82,500.

7. The senior partner, Capt. Joseph Wescott, after having cut one of the two stairways, called upon me and stated that, owing to their loss in this cutting, he was of a mind and had about determined to throw up the job and forfeit the amount of the bond, together with the retained 10 per cent. of what they had already earned. I advised him not to do so, as, if he did, he would put himself in the position of a failing contractor, and so deprive himself of an opportunity to have his bids considered upon any other work that might arise; and that it would be better for him to go on in the face of known loss and appeal to Congress for relief, and that if he could show to Congress, fair and square, that he was necessarily expending, or had expended, more than he was to receive, in my judgment his loss would be made good to him.

8. The stairways in question are of somewhat unusual construction, being in a circular well, unsupported at one side, and having a warped soffit; the last two peculiarities belonging to four out of the six flights of each stairway. No two steps of a flight above the sub-basement flight are precisely alike, and a slightly different pattern would probably be needed by the stone-cutter for each step in a flight. The three upper flights of each stairway are precisely alike, requiring a set of patterns for but one of these flights by which the three could be cut. The two stairways are, however, relatively right and left handed, and would therefore require either two separate sets of patterns or one set so made as to be reversible.

The utmost care was necessary throughout the work to ensure such accuracy that it would come together in the building without recutting or "jobbing," and it is, as a whole, the most difficult granite cutting in the work.

Very respectfully, your obedient servant,

THOS. LINCOLN CASEY,  
*Lieutenant-Colonel, Corps of Engineers.*

Hon. S. Z. BOWMAN, M. C.  
H. Rep. 907—2



WILLIAM T. SMITH AND OTHERS.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5695.]

*The Committee on Claims, to whom was referred the memorial for the relief of William T. Smith, of New Bedford, Mass., agent and managing owner of the American whaling barks Midas and Progress and the American whaling ship Daniel Webster; and Nathan Browne, jr., of New Bedford, Mass., agent and managing owner of the American whaling bark Lagoda; and Samuel Osborne, jr., of Edgartown, Mass., agent and managing owner of the American whaling ship Europa, have considered the same, and respectfully report:*

This is a claim for losses incurred by the five vessels, Midas, Progress, Lagoda, Daniel Webster, and Europa, which, while whaling in the Arctic seas, were obliged to abandon their voyages and convey to Honolulu twelve hundred shipwrecked seamen. The facts in the case are as stated in the following extract from the memorial of the claimants' addressed to the Secretary of the Treasury:

Early in the month of September, A. D. 1871, said vessels were prosecuting whaling voyages in the Arctic Ocean at a point about ten miles northward of Blossom Shoals. The vessels had been fully and completely equipped for the business at great expense, and were then upon the whaling ground fully and completely prepared for the successful prosecution of their voyage. The season for taking whales upon that ground is from the 1st of September till the middle of October; and they had just commenced to take whales, which were plenty and available to capture, there being every prospect of a successful catch, amounting to a practical certainty. While thus prosecuting their voyages, the masters of said vessels received from the masters of some thirty American whaling vessels, which were lying about sixty miles further north, a letter as follows:

“SHIP CHAMPION,

“Off Point Belcher, September 12, 1871.

“To the masters of the ships in clear water south of Icy Cape:

“GENTLEMEN: By a boat expedition which went out to explore the feasibility of a ship's passage to clear water, report there are seven vessels south of Icy Cape in clear water whaling.

“By a meeting of all the masters of the vessels which are embargoed by the ice along this shore, as also those that have been wrecked, I am requested to make known to you our deplorable situation, and ask your assistance.

“We have for the last fifteen days been satisfied that there is not the slightest possibility of saving any of our ships or their property, in view of the fact that the northern barrier of ice has set permanently on this shore, shutting in all the fleet north of Icy Cape, leaving only a narrow belt of water from one-quarter to one-half mile in width, extending from Point Belcher to south of Icy Cape. In sounding out the channel we find from Wainwright Inlet to about five miles east-northeast from Icy Cape

the water in no place of sufficient depth to float our lightest-draught vessel with a clean hold, in many places not more than three feet.

"Before knowing your vessels were in sight of Icy Cape we lightened the brig Kohola to her least draught, also brig Victoria, hoping we should be able to get one of them into clear water to search for some other vessel to come to our aid in saving some of our crews. Both vessels now lie stranded off Wainwright Inlet.

"That was our last hope, until your vessels were discovered by one of our boat expeditions. Counting the crews of the four wrecked ships, we number some twelve hundred souls, with not more than three months' provisions and fuel; no clothing suitable for winter wear. An attempt to pass the winter here would be suicidal. Not more than two hundred out of the twelve would survive to tell the sufferings of the others.

"Looking our deplorable situation squarely in the face, we feel convinced that to save the lives of our crews a speedy abandonment of our ships is necessary. A change of wind to the north for twenty-four hours would cause the young ice to make us stout as to effectually close up the narrow passage and cut off our retreat by boats.

"We realize your peculiar situation as to duty, and the bright prospects you have for a good catch in oil and bone before the season expires, and now call on you, in the voice of humanity, to abandon your whaling, sacrifice your personal interest, as well as that of your owners, and put yourselves in condition to receive on board ourselves and crews for transit to some civilized port, feeling assured that our government, so jealous of its philanthropy, will make ample compensation for all your losses. We shall commence sending the sick and some provisions to-morrow. With a small boat and near seventy miles for the men to pull, we shall not be able to send much provisions.

"Feeling confident that you will not abandon us,

"We are, respectfully, yours,

"HENRY PEASE, JR.,

"With thirty-one other masters."

Of course but one answer could be made to such an appeal, and, after consultation, the masters of the ships thus addressed determined to abandon their voyages and receive the shipwrecked crews, trusting in the justice and generosity of their government to properly compensate them for their losses and expenses thus incurred for the purpose of rescuing shipwrecked American seamen. Preparations were immediately made for that purpose. The cutting-stages were taken in, the cutting-falls are reeved, casks shooled, and the vessels taken to an anchorage south of Blossom Shoal. On the 14th of September and days following, the shipwrecked sailors were taken aboard, and the vessels proceeded with them to Honolulu.

These vessels all arrived in Honolulu on or about October 23, 1871. For the service rendered in conveying these seamen from the Arctic seas to Honolulu, these vessels received the following sums:

Midas, 143 men, at \$35 (gold) each (currency).....	\$5,514.00
Progress, 183 men, at \$35 (gold) each (currency) .....	7,505.00
Lagoda, 170 men, at \$35 (gold) each (currency).....	6,725.00
Daniel Webster, 155 men, at \$35 (gold) each (currency).....	5,975.00
Europa, 244 men, at \$35 (gold) each (in gold).....	8,540.00

The committee have no statement of the currency value of the payment to the Europa. These amounts were paid to the vessels by the United States Government, through the Treasury Department, as a part of the expense of conveying the shipwrecked seamen to Honolulu. Before the voyages of the vessels were broken up as aforesaid, they had caught a few whales, and the receipts from these were as follows:

Midas, oil, \$10,631.25; bone, \$7,911.75—total, \$18,543.00.

Progress, oil, \$5,906.75; bone, \$2,597.75—total, \$8,504.00.

Lagoda, oil, \$14,268.44; bone, \$9,798—total, \$24,066.44.

Daniel Webster, oil, \$9,123.75; bone, \$2,087.75—total, \$11,211.50.

The committee have not the amount of oil and bone received by the Europa, but it could not have amounted to much more than in the case of the other vessels. The vessels then, under the circumstances as stated, abandoned their Arctic voyages, and were thereby put to great expense and suffered very considerable losses, and, on the other hand, their receipts were only as above stated. The question then arises whether the owners of these vessels should be allowed further compensation.

sation on account of their losses and the services which they rendered. It seems to the committee that it is just that further compensation should be allowed under the circumstances of this case. These five vessels had sailed from New Bedford and Edgartown thoroughly equipped for a four years' whaling voyage in the Northern Pacific Ocean. They had a large and expensive outfit of men and materials and provisions. Their position in all respects as to equipment, losses, and the value of their services in rescuing the shipwrecked seamen, was much different from that of merchant vessels. As has been shown by the memorial and other testimony, their whole year's work, so far as gain is concerned, must be prosecuted in the six weeks succeeding September 1. All their year's gain must be made during that time, and if for any reason the prosecution of their business during that time is broken off, all they can do is to return to San Francisco or Honolulu and remain in idleness and at great expense until the succeeding year. These vessels had arrived on the whaling ground fully prepared to prosecute their business of whaling. The whales were plentiful in all directions, and although the vessels had only been there for a few days, they had caught several whales and acquired a stock of oil and bone, as stated above. It was very probable, in the judgment of experienced men, that the vessels would speedily acquire full cargoes and be able not only to reimburse their owners and crews for the great expense incurred, which will be hereafter shown in detail, but to acquire large profits. Suddenly, while the prospects are so favorable for these vessels, a call is made upon them for succor by twelve hundred shipwrecked seamen. These men have no money to promise for the rescue. They are shut up in the Arctic seas with an Arctic winter before them; and the sure result, if they are not rescued by these whaling vessels, is a slow and lingering death either by starvation or by cold. The masters of these vessels, the owners of which appear here as claimants, have this alternative—on the one hand, of turning their backs on these men and leaving them to die, while they go on in the prosecution of their voyages and in making money for themselves, or, on the other, the sacrifice of their gains to rescue these shipwrecked sailors. The choice was made without a moment's hesitation. The masters, with the full consent of all the crews, decided at once to abandon their voyages and to rescue these men, entirely regardless of self and without a murmur. They decided instantly to give up all hope of profit and all hope of reimbursing themselves for their expenses, and to convey these men to a place of safety. It is not a question here of whether the claimants should be paid for services which they voluntarily performed and losses which they chose to make of their own free will, so that they should not blame any one but themselves for the consequences. There was no possible course open to them but to abandon their voyages, no matter what the loss should be, and to rescue these men from their dangerous condition. It was a case of necessity to them; they were obliged by every law of humanity and decency to take the course they did. If they had adopted any other course, a cry of indignation would have gone up from the whole civilized world, which would have justly accused these claimants of a worse crime than murder—that of abandoning these men to a slow and horrible death. It needs no argument to show that these claimants were compelled to suffer these losses, for the reimbursement of some part of which they now apply to the United States. They were as much bound to take these seamen on board as if under the laws of the United States a consul had been present at the place where the shipwreck occurred and had ordered these captains to receive these abandoned seamen on their homeward-bound

vessels. The question then recurs, whether, these services having been rendered, and these claimants having been actually compelled by the strongest laws, those of humanity, to render these services, it is the duty, either legal, equitable, or moral, of the Government of the United States to reimburse them for some part of their losses. The Government of the United States has always regarded it as one of its peculiar duties to look out for the welfare of shipwrecked seamen. From the earliest history of the government this has always been its law and its policy. The Revised Statutes (Sec. 4577 and 4578, following the act of February 28, 1803) make it the duty of consuls and other enumerated officials of the United States to provide for seamen found destitute within their districts passage to some port in the United States at the expense of the government, and all masters of United States vessels are bound to take destitute seamen on board their vessels at the request of the consuls and other officers, and transport them to ports in the United States to which such vessels may respectively be bound, and refusing so to do are made subject to a penalty. Consuls are to return and masters are to receive such shipwrecked seamen, but only homeward-bound vessels are obliged thus to receive them. In other words, a vessel could not be compelled to abandon its voyage for the sake of the conveyance home of shipwrecked seamen. Therefore, in this case, even if consuls had been on the spot, these vessels were not bound by any law to take these seamen, and it cannot be therefore argued that they are only entitled to receive such compensation as is given under the laws for the conveyance of shipwrecked seamen. These rescues were made only under that law of humanity which bound the masters of these vessels to do what they could for seamen in this perilous condition. The Treasury Department apparently, in awarding to these vessels for the conveyance of the men the sum of \$35 each, only awarded what in its judgment the actual cost might have been for carrying the men for such a distance in the case of vessels homeward bound, and not breaking up their voyages for the purpose. The following is a letter from the Treasury Department in regard to this subject:

TREASURY DEPARTMENT,  
*Comptroller's Office, March 20, 1872.*

SIR: Herewith I transmit you a statement of the sums allowed for the rescue of 99 seamen in the Arctic Ocean and their passage to Honolulu.

The allowance is the same made to the owners of the other vessels for like services on the same occasion, viz, \$35 for each man rescued and carried to Honolulu.

The further claim presented by the owners of the vessels, who are constituents of yours, for allowance for the loss of the voyages of the vessels, which were broken up &c., &c., has not been considered, for the reason that the department is not, in my opinion, authorized to consider or allow claims of that character.

I am, very respectfully,

R. W. TAYLER,  
*Comptroller*

HON. JAMES BUFFINGTON, M. C.,  
*Washington, D. C.*

The claim of the government seems to rest on this undoubtedly sound doctrine, that while it felt itself justified under the circumstances and customs in regard to shipwrecked seamen, in paying the actual expenses in conveying them to Honolulu, yet it could not pay any claims for losses incurred by the owners or crews of the vessels in such conveyance, but must leave the question of reimbursing the parties, on account of such losses, to the discretion of Congress. The government has not only assumed under general law and custom the special care of shipwrecked seamen, but has always shown an earnest regard for the rescue



of those lost in the Arctic seas. It is unquestionable that if no vessels had been there in this case, and the government had learned of the unfortunate condition of this large body of shipwrecked sailors, it would instantly have sent a vessel of its own, at no matter how great expense, for their rescue. It is unnecessary to refer to the great sums heretofore spent by the government in explorations of the Arctic oceans, for the purpose of rescuing those lost in the icy regions of the north, from the time of Sir John Franklin down to the present day. The numerous relief expeditions sent to the Arctic seas would be precedents for the allowance, at least to some extent, of the claims in this case. In a case somewhat similar in principle, though the rescue was made on land, the Committee on Claims of the Forty-third Congress, first session, in the case of Joseph Petrie, reported in favor of allowing him \$5,000 for his personal efforts and money expended in rescuing from starvation and impending death a train of emigrants snowed in between the Sierra Nevada and Trinity Mountains, in 1849. It seems clear to the committee, therefore, that both as to the question of precedent and as to the question of right and justice, and the policy of the government, these claimants should be allowed some reasonable compensation. Although the government might not be willing to bear all the loss as computed by the claimants, it cannot be deemed equitable that in the saving of shipwrecked seamen like these it should allow individuals to rescue them at such great loss to the rescuers as that which these men have suffered. The question then recurs, what, under the circumstances of the case, would be a reasonable compensation? The government, it will be remembered, only helped pay for the passage of the seamen to Honolulu, and, in other words, only paid what might be a reasonable compensation on a vessel bound for that port and fitted up like an ordinary merchant or passenger vessel. There are three ways of estimating the value of the services rendered or losses incurred by owners and crews: (1) Probable loss, (2) actual loss, (3) value of the charter of the vessel for such purpose.

1. Probable loss. By this is meant the loss the owners and crews suffered by being obliged to give up the voyages at the time when they took these men on board. In other words, it means the loss of profits, or the speculative losses of their business. This rule of damages would not be allowed either by the courts or by the government in such a case, although few cases can be imagined perhaps where the probable loss is so certain to be the actual loss. But although in this claim, as in other cases, it would be no fair measure of damages for the person to say that if his business had not been broken off he could have made a certain amount of money therein, yet it may be of use, in considering the question of whether the committee have awarded to the claimants an unreasonable sum, to briefly consider what the probable losses of the claimants were. The claimants present detailed statements of their probable losses, arrived at by two methods of estimating, and although the two methods are somewhat different in their results, yet the difference is not so much as to demonstrate either method of computation to be wrong. By the one method the claimants say that, judging from their voyages for the previous and succeeding years, and from all the probabilities of the case, they would have gained a certain number of barrels of oil, and a certain number of pounds of whalebone, ranging, according to the size of the vessel, from nine hundred to seventeen hundred barrels of oil, at 75 cents per gallon, and from 16,000 to 21,000 pounds of whalebone, at \$1.75 per pound; and they claim that, according to this method of reckoning, their losses would be as follows: Midas,

\$51,052.90; Progress, \$51,094.30; Lagoda, \$51,033.25; Daniel Webster, \$50,762.50; Europa, \$71,100. According to the second mode of estimating the probable losses, they say that experience in the whaling business shows that a vessel upon a voyage makes at least 15 per cent. of its expenses and investments, and that according to this, which they say is an entirely fair estimate, the losses of the vessels are as follows, including interest: Midas, \$42,608.40; Progress, \$44,299.83; Lagoda, \$26,556.16; Daniel Webster, \$53,173.51. No estimates have been received by the committee on this point in regard to the Europa. It is perhaps fair to consider that the probable loss, meaning thereby, as aforesaid, the loss of profits or the speculative loss, might be as above stated.<sup>2</sup>

2. Actual loss. In the second place, what was the actual loss of these claimants, so far as it can be computed, meaning thereby the losses which they have in fact suffered so far as they can be calculated from their books and from the estimates of experts? The parties presented voluminous testimony in regard to this in full, detailed, and itemized statements. Without giving all the details of the statements, it may be said that in the case of each of the vessels except the Europa the claimants have given statements showing especially the expenses of these vessels for this season of 1871. These accounts show in detail what the cost of outfits, of insurance, and of expenses after sailing, of depreciation and damage to the vessels, and other actual costs, were. From these it appears that the actual losses of the vessels, exclusive of interest, were as follows: Midas, \$23,000.75; Progress, \$23,840.47; Lagoda, \$11,623.75; Daniel Webster, \$22,533.62. No account of the Europa is furnished in this respect, but it would amount probably to considerably more than those of the others, as she was a much larger vessel.

3. The third mode of estimating what should be paid to the claimants is to consider what the cost of chartering such vessels for such purposes would have been, supposing that the vessels had taken the round trip from Honolulu to the Arctic regions and had taken these sailors on board as passengers. The value of the performance by other vessels of such service would be no criterion of the value of these vessels. They had a large crew for whaling purposes, and a large outfit which became entirely useless for this voyage. Much cheaper vessels, fitted out at much less expense, would have served as well and even better for this purpose. The charter-party value of such vessels for the actual service rendered certainly could not be less than the actual loss incurred by such vessels in rendering such service, for it is a self-evident proposition that no one would charter a ship to others for less than it would actually cost him. The least charter-party value of the vessels under such circumstances would be the actual cost of such vessels for the voyage.

*Recapitulation of losses.*

	Probable loss with interest.	Actual loss.	Actual loss with interest.	Charter value
Midas.....	\$42,608 40	\$23,000 75	\$34,601 12	(Say) \$34 00
Progress.....	44,299 83	23,840 47	35,760 70	(Say) 35 00
Lagoda.....	26,556 16	11,623 75	17,435 62	(Say) 17 00
Daniel Webster.....	53,173 51	27,827 41	41,741 00	(Say) 41 00
Europa.....	71,100 00			

As to the Europa, the above estimate alone was furnished, which, in the opinion of the committee, is a very high one. Her loss was at any rate equal to that of any other of the vessels, and was probably consider-

ably larger. As has been before stated, she was a vessel of more tonnage than the rest. All these losses were computed as above, after deducting the receipts from the United States, and those from the oil and bone which were taken on the cruise.

The Committee on Claims of the Forty-fifth Congress, third session, reported in favor of this claim, and recommended that it should be referred to the Court of Claims for decision as to the amount that should be paid to the claimants. The concluding words of this report are as follows :

The question comes home to the government, under these circumstances, whether it will suffer these claimants to bear all the loss, or magnanimously come to their relief and bear at least a reasonable part of the burdens.

They have been paid for transporting the seamen to Honolulu. Shall they be paid any part of their losses, is the only remaining question. And here we go alone, and independent of any rule of law or precedent. Shall the United States stand any of the losses? We have no doubt at all but the claimants believed their government would see that they were saved from loss if they left their business and relieved and rescued these hundreds of its people. And it also appears by the statement made by the rescued, sent to the claimants before being received by them, that they felt certain a magnanimous government would compensate the claimants for their losses resulting from the abandonment of their voyages.

Natural justice demands, the voice of humanity demands, we think, that the generous men who abandoned their business and went to the rescue and relief of these imperiled American seamen should not go unrewarded for their generous and noble action.

The question is, in the language of said report, "whether the government will suffer these claimants to bear all the loss, or magnanimously come to their relief and bear at least a reasonable part of the burdens." The committee are of the opinion that the government ought at least to bear such reasonable part of these losses, although they cannot agree that all the losses, as claimed, should be paid by the government. The question of loss is, of course, to a great extent, a question of opinion and of judgment. All that the committee can do is to consider carefully the claims and statements and figures of the claimants, as presented to them, and then to use their best judgment in fixing upon the amount which, while it may not compensate these parties for all their losses, would yet treat them with substantial justice and impose upon the government at least a reasonable portion of the burdens which the claimants have borne.

Under all the circumstances of this case, your committee recommend that the sum of \$10,000 be awarded to the owners of the *Midas*, *Progress*, *Lagoda*, *Daniel Webster*, and *Europa*, respectively; that is to say, to each of said vessels. This settlement of the case should be accepted by the claimants, if at all, as a final settlement of their claims, and a clause is inserted by the committee in the bill for that purpose. The custom seems to have become altogether too prevalent for claimants to get all they can from one Congress, accept the money, and then appeal to another Congress for further relief, so that many claims in regard to which awards have been made by Congress are frequently presented to succeeding Congresses. In this, as in most other cases, the claimants have their option whether to accept an award or not, and if they conclude to accept, it should be considered as a bar to every appeal to Congress for further help. Your committee therefore report the following bill, and recommend that the same be passed.





## UNIVERSITY OF NOTRE DAME DU LAC.

APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

### REPORT:

[To accompany bill H. R. 776.]

*The Committee on Claims, to whom was referred the bill entitled "An act refunding to the University of Notre Dame du Lac, of Saint Joseph County, in the State of Indiana, the sum of \$2,334.07, that being the amount paid on certain imported articles," &c., have considered the same, and respectfully report :*

This case was favorably reported upon by the Committee of Claims of the Forty-fifth Congress (second session, Rep. No. 666), and their report was as follows :

*The Committee of Claims, to whom were referred the bill (H. R. 2323) and accompanying papers in regard to the refunding of certain duties paid by the University of Notre Dame du Lac, of Saint Joseph County, Indiana, submit the following report :*

This university was founded in 1844, with a small endowment of lands, and, by reason of careful and economical management, has become a popular and useful institution of learning.

The officers, professors, and teachers give their services to the institution without other compensation than a bare living, by reason of which tuition is afforded at cheaper rates than similar institutions in the country, and they have annually about six hundred pupils.

In connection with the college building the university has erected a church, and, for the purpose of beautifying and ornamenting the same, they purchased in Europe a lamp costing \$2,399, upon which they paid duty in gold to the United States. They also imported painted and stained glass for the windows of said church, costing in Europe \$3,960, upon which they also paid duty to the government in gold, amounting altogether to the sum of \$2,334.07 of duty paid by said university on the said articles.

These duties were paid under protest, the university claiming that the articles ought to be admitted free of duty under the provisions of the tariff act. By section 2505, Revised Statutes, the importation of the following articles are exempt from duty, to wit: "Philosophical and scientific apparatus, instruments and preparations, statuary, casts of marble, bronze, alabaster, or plaster of Paris, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for philosophical, educational, or scientific purposes or encouragement of the fine arts, and not intended for sale." Also, "regalia and gems, and statues, and specimens of sculpture, when specially imported in good faith for the use of any society incorporated or established for philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school, or seminary of learning in the United States."

The bell for this university, weighing 16,650 pounds, was imported, and the duty upon that, paid by the university, was, by special act of Congress, in 1868, refunded to the university.

Church organs have been admitted free of duty, and there are many precedents where Congress has, by special act, refunded duties on articles imported for the use or adornment of churches and colleges.

The articles named in this bill, which were imported in good faith for the use and adornment of the church belonging to the University of Notre Dame, and not for sale, and are works of art, open at all reasonable times for the inspection of the public, are certainly as much entitled to be admitted free of duty as organs and bells.

Your committee think the sum paid by the university on these articles ought to be refunded, and for that purpose report back the bill No. 2323, and recommend that it do pass.

This committee concur in the statements and recommendations in the said report.

Although technically and by a strict construction of law the said articles were not exempted from the payment of duty, yet they seem to come as much within the intent or object of the law as the articles specifically enumerated as exempt from duty.

This committee report back the bill (H. R. 776), and recommend that the same do pass.

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JULIA E. SEELEY.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 63.]

*The Committee on Claims, to whom was referred the bill for the relief of Julia E. Seeley, postmistress at Great Barrington, in Massachusetts, have considered the same, and respectfully report:*

This is a claim for relief from the loss occasioned to the claimant by robbery of the post-office in Great Barrington, in Massachusetts, on the night of June 6, 1873. Claimant entered on her duties as postmistress at said office April 1, 1873.

This claim has been presented to preceding Congresses, but has never reached final action therein.

The Committee on Post-Offices and Post-Roads of the Forty-fifth Congress (Third Session—Report No. 778—Senate) reported, that the "evidence submitted shows very conclusively that no blame can be attached to the postmistress, and that all due effort was made in recovering the property," and recommend the passage of a bill for relief.

The Committee on Claims of the House of Representatives of the Forty-fourth Congress (First Session—House Report No. 704) recommended that the claim should be allowed. The report of said last named committee was as follows:

From the affidavit of the petitioner, it seems that on the night of the 6th day of June, 1873, the post-office at Great Barrington, Mass., was broken into by burglars, and stamps to the value of \$565.20 and post-office funds to the amount of \$170.98 were taken and carried away, and no part thereof was ever recovered. The building in which the post-office was kept was of brick. The back part of the building was occupied by Isaac Seeley, father of the postmistress, as register of deeds, and the front room was used as the post-office. There was in the building a large iron safe used for both offices, in which the stamps and funds were placed, after having been counted the night before, and the safe, as well as the doors to the building, was securely locked before leaving. The burglars gained entrance to the building by forcing from the casemate the staple holding the lock, and then blew open the safe with gunpowder, and rifled its contents. The statement made by the postmistress is corroborated by that of her father, who had been the previous postmaster, and had a knowledge of the facts. The fact of the robbery is also admitted by Special Agent Woodward, who went to Great Barrington and examined the premises, and says: "That the robbers belong to a gang of professional burglars from New York City, whose operations on the line of the Housatonic Railroad are noted in the indorsed extract from the Berkshire Courier." He then proceeds to name several other post-offices that have been robbed, as he believes, by the same gang. The committee are of the opinion that the loss did not occur from any neglect on the part of the postmistress, and therefore report the petition back with the accompanying bill making allowance for the money stolen, and recommend that the same do pass.

This committee concur in the said conclusions of former committees of Congress. It is apparent that before the robbery of the post-office the postmistress in the protection of the property intrusted to her charge exercised that reasonable care and diligence which any one would have used in the protection of his own property, and all that she could have been expected to exercise under the circumstances, and that after the robbery all due effort was made for the recovery of the stolen property. She therefore is entitled to the relief prayed for.

The committee therefore report back the accompanying bill and recommend that the same do pass.

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HENRY L. JAMES.

APRIL 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1402.]

*The Committee on Claims, to whom was referred the bill for the relief of Henry L. James, of Williamsburgh, Mass., have considered the same and respectfully report:*

This is a claim that the said James be allowed the sum of \$200.74, being the amount of money and stamps stolen from the office in Williamsburgh, Mass., at which he was postmaster. This claim has formerly been considered by Congress though no final action has been taken in regard to it. The Committee of Claims of the Forty-fourth Congress, second session (February 1, 1877, report No. 163), made a favorable report to the House of Representatives, and in the Forty-fifth Congress, second session, a favorable report on the same claim was made to the Senate, and the bill passed the Senate June 12, 1878. The report of the Committee on Claims of the Forty-fourth Congress was as follows:

Henry L. James, of Williamsburgh, in the State of Massachusetts, claims that he was for a long time postmaster at that place; that on the night of the 8th of August, 1872, his office was entered by burglars, the safe in which he kept all of the valuables pertaining to the office blown open, and contents thereof carried off about a mile, where it was looked over, and such as was not deemed of value to the robbers was left under a bridge, where it was found the next day, the balance being carried away, and no part of the same was ever recovered; that there was taken \$65.84 of the money-order fund, and he estimates \$150 worth of postage stamps, making a total of \$215.84; that this loss did not arise from neglect or from any fault on his part; that he had money and other valuables of his own in the said safe that were likewise carried away and not recovered. As proof of the foregoing statement, the postmaster submits his own affidavit and that of Gains O. Wood, his assistant. The latter swears that the postmaster was also acting as express agent, and the express company sustained a loss at the same time by reason of said robbery; that the said express company caused an examination of the facts and circumstances connected therewith, and became satisfied that no blame could be attached to Mr. James or to the employes, and allowed him a credit for the amount stolen. In reply to a letter of inquiry, the Third Assistant Postmaster-General replies, stating that the amount of money-order funds in the hands of the postmaster at the date of the robbery, as it appears from the books of the department, was \$50.74, instead of \$65.84, as stated by the postmaster; that an order issued by him the next day for \$15.10 would just make the difference; that the amount of stamps claimed to have been lost is not unreasonable, according to an estimate from the books. The committee recommend that an allowance be made as follows:

For money-order funds stolen .....	\$50 74
For stamps stolen .....	150 00
	<hr/> 200 74

This committee after full consideration find the facts to be as stated in said report of the Committee of Claims of the forty-fourth Congress,

and adopt the same as their report. It appears that due diligence was used by the postmaster both in the care of his stamps and money before the robbery, and in endeavoring to recover the property stolen by the burglars and that he certainly used that reasonable care which any man of ordinary diligence would employ in the protection of his own valuables. The committee therefore report back the accompanying bill and recommend that the same be passed.

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H. K. BELDING.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BOWMAN, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 1170.]

*The Committee on Claims, to whom was referred a bill for the relief of H. K. Belding, have considered the same, and respectfully report:*

The claim in this case was considered and favorably reported upon by the Committee of Claims of the Forty-fifth Congress, second session (Report No. 676), but no final action was reached.

The report of said committee was as follows:

They find that said H. K. Belding was contractor on mail-route No. 13585, from Brownsville, Minn., to Carimona, in the same State; that the contract was for four years from July 1, 1858. The contract price for carrying the mail on this route was \$1,800 per annum. Mr. Belding performed the service under the contract until May, 1859, and was paid the contract price therefor. In 1859 there was a failure of sufficient appropriation for this route, and an order was issued by the Post-Office Department reducing the service on the same one-third.

There was some correspondence between the contractor and the Post-Office Department about continuing the full service, and the contractor was informed there was no objection except there was no money to pay until Congress convened and made an appropriation.

Mr. Belding did perform full service from May 1, 1859, to October, 1860, and has received but two-thirds of the contract price therefor, and claims that having rendered the service in good faith he should receive the full compensation named in his contract.

This full service was performed for seventeen months after the order of reduction, and at the contract rate Mr. Belding should have received \$150 per month. He did receive but \$100 per month, and he asks to be paid \$50 per month additional, or \$850 for the service so performed.

The service having been performed with the knowledge of the department and for the manifest benefit of the community, the committee think it just and equitable that Mr. Belding should be paid for the service actually performed the contract price for the same.

They therefore recommend the payment to Mr. Belding of the sum of \$850 for the seventeen months of service as above stated.

Mr. Belding makes an additional claim, and the committee find the following facts:

Prior to the 1st of October, 1860, the route from Brownsville to Carimona was extended, and the contract with Belding annulled. Mr. Belding complained to the department that he had left a good business and made large investments to perform his contract, and would suffer very great injury if compelled to give it up. He was informed that he would be reinstated and his contract renewed. The service at this time was lessened five miles at one end of the route and increased twelve miles at the other, and the compensation was increased \$110 per year.

Negotiations continued between Mr. Belding and the Post-Office Department from October 1, 1860, to February 14, 1861, four months and fourteen days, when the contract was renewed with Mr. Belding. During this four months and fourteen days Mr. Belding performed the service and has received no pay therefor. This route over which Mr. Belding performed the service had been included in a much larger one and

let to other parties. They never performed any service upon it, but collected the pay under their contract for the service performed by Mr. Belding.

It clearly appearing that the original contract with Mr. Belding was annulled for no fault or omission on his part; that he continued to perform the service in good faith under the assurance that he would be reinstated; that his doing so was well known to the Post-Office Department, and that he was subsequently reinstated, we are of the opinion that the payment to other parties for this service, under the circumstances, should not relieve the government from paying Mr. Belding therefor. We therefore report back the bill without amendment, said bill including payment of the two sums allowed by the committee, and recommend that the bill pass.

This committee concur in the said report and recommendations, and therefore report back the bill and recommend that the same do pass.

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JOHN F. SEVERANCE.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2820.]

*The Committee on Claims, to whom was referred the bill (H. R. 2820) for the relief of John F. Severance, of Shelburne Falls, in the State of Massachusetts, have considered the same, and respectfully report :*

This is a claim for relief by the said Severance, as postmaster at Shelburne Falls, in Franklin County, in the State of Massachusetts, from loss occasioned by the robbery of his office on the night of June 19, 1878. The claimant was appointed as postmaster at Shelburne Falls and entered upon the duties of his office March 1, 1878. On the night of June 19, between twelve and three o'clock, burglars forced open the windows of the office, blew open the safe with gunpowder, and carried away all the stamps therein, of the aggregate value of \$435, and all the money therein, of the value of \$100, which money had been received from the sale of stamps and postal cards and from postage. At the same time the burglars broke open the jewelry store of J. G. Brown, in the next building to the post-office, and blew open the safe therein and rifled it of jewelry and \$375 in money, the loss of said Brown amounting in all to from \$2,000 to \$2,500. Early next morning it was discovered that the post-office and jewelry store had been robbed. The post-office was separated by a partition from the express office, and the outer door of the express office and the partition door between that and the post-office had been forced open. The safe door was badly torn by powder and the inside door blown off. It was a fire-proof safe of the usual construction and made by E. R. Morse, a manufacturer of good reputation. Pursuit was immediately made of the burglars. The same evening the said Brown and Mr. Bartlett overtook a man eight miles from the said village with a valise, and on asking to see it, he emptied two revolvers at his pursuers, hitting Mr. Bartlett, and then ran into the woods. They followed his trail but lost it. The next night the bridges over which he might escape were guarded and a similar man was seen on the railroad bridge near by. The patrol opened fire with revolvers, which the man returned. They fired away all their cartridges, but the man escaped into the woods. The next morning a man who lived near by found on the spot where this affray had occurred blood on the timbers and a bundle dropped on the abutments of the bridge. It contained the jewelry of the said Brown and specie belonging to him, and a package with \$13 in silver change and all the postage-stamps which the postmaster had lost. Some weeks after an old valise was found near the supposed trail of the burglars with \$2 in pennies.

The postmaster's account of his loss is, then, as follows:

Stamps stolen from the office .....	\$435 00
Money stolen from the office .....	100 00
<b>Total</b> .....	<b>535 00</b>
<b>Recovered:</b>	
Silver .....	\$13 00
Pennies .....	2 00
Stamps .....	435 00
	<b>450 00</b>
<b>Making the balance lost by the postmaster</b> .....	<b>85 00</b>

Full affidavits of all the facts were presented to the committee by the claimant and by other reputable citizens who are acquainted with the circumstances of the case, and some of whom joined in the hunt for the burglars.

A report in the said case was made by the special agent of the Post-Office Department to said department, which report is as follows:

BOSTON, March 5, 1879.

SIR: I have the honor to return ordinary case No. 11381, and to inform you that after investigation, I found that the office was entered by burglars on the night of June 18, 1878; that \$435 worth of stamps and \$100 of postal money was stolen; and that the day following there was found all of the stamps and \$13 of the money by the post-office, leaving a loss of \$87 to the postmaster.

Up to this time no trace of the depredators has been found, although the town officers have been on the constant hunt and have offered a reward of \$250 for their apprehension.

Very respectfully,

CHARLES FIELD,  
Special Agent Post-Office Department.

DAVID B. PARKER,  
Chief Special Agent Post-Office Department, Washington, D. C.

The testimony satisfies the committee beyond a doubt that the claimant and the officials connected with the office have always borne the highest character, and that they used due diligence in the care of the property intrusted to their charge. They did all that any man could reasonably have been expected to do in order to secure the property in the post-office. It is also evident from the circumstances, as reported, that everything was done that was possible to secure the burglars and the property which they had stolen, and it was owing to the diligence and perseverance of the pursuers that so large a portion of the stolen property was recovered and the loss of the postmaster was reduced from the sum of \$535 to the sum of \$85. The committee believe that the claimant ought to be relieved of the loss, and therefore report back the accompanying bill and recommend its passage.

JOHN S. BRAXTON.

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APRIL 2, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5696.]

*The Committee on Claims, to whom was referred the bill entitled "A bill for the relief of John S. Braxton, collector of customs at Norfolk, Va.," have considered the same, and respectfully report:*

The Committee on Claims of the Forty-fifth Congress made a favorable report in the said case, and recommended the passage of a bill, of which the said bill is a copy. Their report was as follows:

*The Committee on Claims, to whom was referred the petition of John S. Braxton, collector of customs at Norfolk, Va., praying to be reimbursed the sum of \$1,332.40, paid by him to cover alleged defalcations by subordinate officials in his office, having had the same under consideration, beg leave to report:*

That it appears from the petition of said collector, which is under oath, and from other affidavits and papers presented to the committee, that said John S. Braxton was appointed collector of customs at Norfolk, Va., in February, 1877; that he found in said office when he took possession of the same and entered upon his duties, Charles E. Gettslich, deputy collector and clerk, and Henry Miller, warehouse and entry clerk; that these were responsible positions, by virtue of which these officers had virtual custody of the funds appertaining to said office, receiving the cash, depositing it, &c. It further appears that the reputation of said Gettslich and Miller for honesty, integrity, and efficiency as officers, was high in the community, as well as at the department; that said Gettslich had been a customs officer for twenty-two years, and said Miller had been for eight years, and both were represented as being very familiar with their duties; and said collector states under oath that he was advised that the retention of these two officers, thus experienced, was a necessity; and, moreover, that the avowed policy of the government was against the removal of officers unless charges were preferred and substantiated against them; and that for these reasons, although he was desirous of substituting other persons better known to him in their places, yet he was constrained to keep said Gettslich and Miller in office.

It further appears that after said John S. Braxton took possession of his said office, and entered upon his duties as collector, the said Gettslich and Miller were guilty of taking from the public funds collected in said collector's office, and for which said John S. Braxton was responsible, the sum of \$1,553.76, \$778.50 of which was wrongfully and fraudulently applied by them in the payment of the salaries of certain light-house keepers, which accrued during the incumbency in office of Luther Lee, jr., the predecessor of said John S. Braxton in said collector's office; and the balance was applied to their own use.

As soon as the said John S. Braxton discovered the wrongful taking and embezzlement of this money, he deducted from the \$1,553.76 taken the sum of \$221.36, which was due to the said Gettslich and Miller on their salaries, and at once placed the sum of \$1,332.40, the remainder of the sum embezzled and wrongfully taken by them, in bank, to the credit of the United States, out of his own private funds. The evidence clearly shows that of the amount wrongfully taken by the said Gettslich and Miller from the funds collected by the said John S. Braxton, and for which he was responsible \$778.50 was taken and wrongfully and fraudulently applied in payment of the

salaries of light-house keepers, which had accrued during the incumbency of the said Luther Lee, jr., and for the payment of which, funds had been previously furnished by the United States to him, the said Luther Lee, jr., but which had not been applied by him for that purpose. Instead of using the money furnished for the payment of these salaries, overdrawn checks were issued by the said Gettslich, as special deputy, and after the said John S. Braxton became the collector, funds collected under him, and for which he was responsible, were taken by said Gettslich and Miller, and fraudulently applied in payment of said overdrawn checks, and of the salaries of said light-house keepers, as before stated. This amount, therefore, of \$778.50, the committee are of the opinion was wrongfully and fraudulently applied in payment of salaries for which the United States Government was responsible, and that the same should be refunded to the said Braxton, and the amount recovered from the sureties of the said Lee on his official bond.

As to the balance of said sum of \$1,553.76 taken by said Gettslich and Miller, amounting to the sum of \$553.90, it is claimed by the said John S. Braxton that he is not liable for the wrongful acts of the said Gettslich and Miller, his subordinates; and for the reason that he does not appoint them, but that he only nominates, and the Secretary of the Treasury appoints his deputies and other subordinates, and removes them at pleasure. Said Braxton further claims that even if liable in ordinary cases for the acts of his subordinates, he should not be in this case, for the reason, as he swears, that he wanted to substitute other officers who were better known to him in place of said Gettslich and Miller; but because of their high standing in the department, their long experience in the customs service, and the civil-service rules as to changes of officers, he was constrained to keep them in office against his own judgment and wishes.

Said Braxton also further claims that through his diligence and earnest efforts in hunting up the wrongs and frauds committed in said collector's office under the administration of it by the said Luther Lee, jr., his predecessor, the government is likely to recover some \$14,000 which, but for his efforts, would have been a loss to the government. And your committee, relying upon the truth of these statements, and believing that the said John S. Braxton has not been guilty of any want of care and prudence, of any negligence or wrong on his part, but, on the contrary, has shown himself to be an honest, faithful, and diligent officer, after a careful consideration of all the facts and circumstances, and without determining the question whether collectors of customs are legally liable for the wrongful acts of their subordinates when not at fault themselves, or not, are of the opinion that it is but an act of justice to Mr. Braxton that he should be relieved from loss in this matter, and that the said sum of \$1,332.40 which was wrongfully taken by the said Miller and Gettslich, and which, to save his own good name from suspicion, he at once, on discovery of the fraud and the amount taken, deposited in bank to the credit of the government, should be refunded to him; and for that purpose the committee report the accompanying bill, and recommend its passage.

This committee concur in the statements in the said report and adopt it as a part of their own.

In regard to the claim for the amount of \$778.50 as hereinbefore described, it is clear that it rightfully belongs to the claimant. If claimant, from perhaps an over-zealous desire to maintain his reputation and standing with the Treasury Department and others, had not voluntarily paid over said amount to the government, immediately on discovering its embezzlement by his subordinates, it would have been allowed to him in his accounts. The Treasury Department seems to have been of the opinion that if he had not chosen to pay said amount, it could relieve him from its payment; but that after the money had once been received into the Treasury, it could not lawfully be paid back to the claimant without authority of Congress.

The letter from the Secretary of the Treasury in regard to this point and the justice of the claim for said amount is as follows:

TREASURY DEPARTMENT, *January 28, 1877.*

SIR: I have to acknowledge the receipt of the letter of the clerk of the Committee on Claims, dated the 25th instant, requesting that the committee be furnished with all information relating to the claim of John S. Braxton, collector of customs at Norfolk, Va., for refund of moneys, and also my opinion as to the propriety of granting relief in the premises.

In reply, I have the honor to inform you that, while the department does not feel authorized to refund the money paid by Mr. Braxton, yet it is my opinion that he has a just and equitable claim upon the government for the refund of this money. Had



it not been voluntarily paid in by the collector, I should have given him relief without the necessity of appealing to Congress.

I have the honor to transmit herewith copies of all papers in this department bearing on the subject.

I am, very respectfully,

JOHN SHERMAN,  
*Secretary.*

Hon. JOHN M. BRIGHT,  
*Chairman Committee on Claims, House of Representatives.*

The following points seem to be clearly established :

1. The claimant not only used all due and reasonable diligence in the performance of the duties of his office, but it is difficult to see how under the circumstances any person could have prevented the said embezzlements by the exercise of any degree of diligence or care.

2. His subordinates, who embezzled the moneys, were not the claimant's nominees or appointees, but were appointed by the Secretary of the Treasury upon the nomination of one of the claimant's predecessors in office. Such officers could only be appointed or removed by the Secretary of the Treasury. (General regulations under customs and navigation; laws (1874), sec. 1029, 1041, 1042, 1034; Rev. Stat., sec. 2630.)

3. The claimant upon his appointment as collector, protested against the retention of the two officers, who subsequently embezzled the money, but was obliged to retain them in employment, "out of deference," in the language of the special agent of the Treasury Department, "to the officials in the Treasury who advised him that it would impair the efficiency of his custom-house to remove these officers and replace them with raw, untrained men.

4. He could not file charges for or demand the removal of these men. They had been in service respectively twenty-two and eight years, had good records, and were of high reputation.

5. The embezzlement, then, being made by men beyond his control and above suspicion, he should not be held responsible for it. He should not be held responsible for the acts of servants and appointees of the government, not in any way nominated or indorsed by him though technically under him and imposing on him upon his bond a liability for their acts.

6. He was not only reasonably diligent before the fact (of embezzlement), but after the fact, in that he at once had the officers removed, and they were convicted and sentenced—restored the money, some of which at least he probably could have avoided paying—and by the exposure of previous frauds put the government in the way of recovering money previously lost.

The committee therefore recommend the passage of the accompanying bill, which they report back as a substitute for the bill referred to them, which is changed so that the amount granted thereby may be paid to his personal representatives, the claimant having recently died.



## BRIG OLIVE FRANCES.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BOWMAN, from the Committee on Claims, submitted the following

### REPORT:

[To accompany bill H. R. 5697.]

*The Committee on Claims, to whom was referred the bill for the relief of the owners and officers of the brig Olive Frances, have considered the same, and respectfully report:*

This is a claim for loss of the brig Olive Frances, of Machiasport, Me., by collision with the United States gunboat Winooski, in the night of July 30, 1866, and for the loss occasioned thereby to the owners, officers, and others on said brig.

The Committee on Claims of the House of Representatives (Forty-fifth Congress, third session, Report No. 21, Dec. 13, 1878), reported a bill (H. R. 5518) for the reference of said claim to the Court of Claims for their consideration and final adjudication. The said report, which fully sets out all the facts in the case, is as follows:

*The Committee of Claims, to whom was referred the bill (H. R. 2517) for the relief of the owners of the brig Olive Frances, having had the same under consideration, respectfully report that from the evidence presented they find the following facts:*

The brig Olive Frances was built at East Machias, in the State of Maine, in the year 1864. Her registered tonnage was 330.61 tons.

On the 24th of July, 1866, this brig, under charge of Capt. Frederick A. Small, of Machiasport, master, sailed from Boston, Mass., in ballast, for Little Glace Bay, Cape Breton, under charter to carry coal from thence to Bath, Me. Said brig was well manned, tackled, and appareled for said voyage, and proceeded on the same without interruption, until Monday morning, July 30, at about fifteen minutes before one o'clock a. m., when the said brig was run down by the United States gunboat Winooski, and said brig almost immediately filled and capsized, and became a total loss. Said gunboat laid by said brig till daylight, and fastened to and endeavored to tow her into some port, but, after parting several large hawsers, the brig keeled over farther, and, finding it impossible to tow her, she was abandoned at sea.

At the time of the collision a very thick fog prevailed. Said brig had the lights burning then required by law, viz, a green light on the starboard side, and a red light on the port side, with inboard screens, with a lookout properly stationed and on duty at the time, who sounded a gong every two or three minutes, and there was also a fog-horn, which was frequently sounded. The wind was about southwest. The brig was braced sharp up on the wind, and was heading about south by east, and was about 40 miles from Sambro light on the Nova Scotia coast. There was a moderate breeze, and the brig was under light sail and making about three knots an hour. The Winooski came up under the lee of said brig and struck her on the port side, abreast of the fore rigging. The Winooski was heading about west by south.

The bow of the Winooski cut into the deck of the brig about two planks in depth and then backed out. Captain Small, of the brig, called out to the gunboat, "You have not cut us down to the water's edge," and received reply from the gunboat, "We

have a prow extending out six feet from our bow under water, which has gone through you." This proved to be true, as the brig immediately filled with water.

It appears that when the gunboat discovered the brig, she reversed her wheels, but not in season to avoid the collision.

The brig filled so rapidly and capsized that nothing of consequence was saved; and the officers and crew lost nearly all their personal effects. The evidence does not show at what speed the gunboat was running at the time she discovered the brig, but at midnight the log showed a rate of seven knots per hour, and the collision occurred forty-five minutes later, and from its effects we infer there had been no change.

Your committee are satisfied there was no fault or negligence on the part of the brig that contributed to the collision. In the absence of fault on the part of the sailing-vessel, the presumption, *prima facie*, is that the steamer is answerable, and so it has been ruled by the Supreme Court. (*Steamer Oregon vs. Rocca et al.*, 18 How., 570; *Pope et al. vs. R. B. Forbes*, 1 Cliff., 338.) Steamers having more power and speed than sailing-vessels, and being more immediately subject to control, greater caution and vigilance are expected of those in charge of them to avoid collision. (*Baker vs. City of New York*, 1 Cliff., 75; *Pope vs. Forbes*, 1 Cliff., 371.) In the opinion of the committee the principal and primary fault of the *Winooski* was in running at too great speed in such a fog. She was on the coast of Nova Scotia, within 40 miles of Sambro light, in the track of commerce; and with a fog so dense that a light could not be seen more than a ship's length, is evidence to your committee that her rate of speed was too great, and that it was through her fault the collision occurred.

The question is of such character and importance that your committee are of opinion that the facts should be examined in a court where the government may be represented, and therefore report back the bill with a substitute referring the claim to the Court of Claims, and recommend that the same do pass.

Your committee are of the opinion that under the circumstances of this case the claimants should have the same rights to recover from the United States and to prove their claim that they would have had if the United States had been a private corporation or an individual.

There is no reason in justice or equity why the United States should be under a greater or less obligation than an individual would be under similar circumstances, and all such cases of collision between vessels, owned by individuals or private corporations, are heard and determined in the United States courts of admiralty under the rules applicable to proceedings in admiralty.

A claim of this kind involves many, and perhaps disputed, questions of fact depending upon admiralty law; as, for example, whether the parties were both negligent; whether the claimants in the display of lights and otherwise complied with the law and used due diligence; what is the measure of damages and the amount thereof, &c.; and it seems to the committee that all the various questions appertaining to this case can best be decided in a court of admiralty, where the evidence may be taken and the witnesses cross-examined, and the government can be represented by its law officers, and other proceedings shall be had as in cases in admiralty between individuals.

The committee therefore report back the bill with a substitute referring the claim to the district court of the United States for the district of Maine, and recommend that the same do pass.

SYLVIA JENKS.

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JUL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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J. GILLETTE, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2151.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 2151) granting a pension to Sylvia Jenks, widow of George Jenks, a soldier of the war of 1812, having had the same under consideration, respectfully submit the following report:*

It is in evidence that the said Sylvia Jenks, under the act of March 1878, applied for a pension at the office of the Commissioner of Pensions, in account of the service of her said husband in the war of 1812, and that the same was rejected on the 19th of December, 1878, on the ground that the soldier did not receive an honorable discharge.<sup>7</sup>

The claimant alleges that the said soldier came home on a sick leave, that he was not able to return to his company, and that while thus prostrated at home the war closed and he never returned to his command, and that consequently his record does not show an honorable discharge. These allegations of the claimant are supported under oath.

There is also testimony of a general character contained in the affidavits of Franklin N. Jenks and Timothy Lewis, supporting the declarations made by the claimant under oath, relating to the illness of her husband and his period of service in the Army during the war of 1812.

It also appears, from a part of the testimony in the case, that a bounty and warrant for 160 acres of land was issued to the claimant on account of the said services of her husband in the war of 1812—although the number and date of said warrant do not appear.

It is also in evidence that she is very aged and infirm, and in destitute circumstances.

The committee are of the opinion that the evidence is sufficient to establish the identity of the soldier, his period of service, and the cause of his absence from said service at the time when he was marked upon the rolls of his company as a deserter. They are of the opinion that the claimant is entitled to the relief prayed for, and therefore return the bill to the House, and recommend the passage of the same.



OLIVE STEPHENSON.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GILLETTE, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1818.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 1818) granting a pension to Olive Stephenson, having had the same under consideration, respectfully submit the following report :*

It is in evidence that the claimant filed an application for a pension before the Commissioner of Pensions for the services of her husband during the war of 1812, declaring that he enlisted as a private in Captain Monroe's company, New York Militia, and that he served in the same for a period of three months as a teamster, having been detailed for that work after his enlistment in said company. This application was rejected by the Commissioner of Pensions on account of service rendered as a teamster, as shown by the declaration, and also by the report from bounty-land division. There is no evidence before the committee to establish his service as a private soldier during the war of 1812. There is evidence, however, that he served for a period of 53 days as a teamster transporting baggage to Sacket's Harbor, for which service his widow received a bounty-land warrant, No. 25347—160 acres.

As this committee has reported favorably upon the petition of others whose service during the war of 1812 was that of teamster, and as it is possible that those parties were enlisted men, detailed in an emergency for such service, and, further, as it is the opinion of the committee that a service as teamster during that war should entitle the party to a pension, as evidenced by favorable action upon a bill amending the act of March 9, 1878, to that effect, they therefore consider the claimant entitled to relief, and herewith return the bill to the House and recommend the passage thereof.





WILLIAM HARRINGTON.

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APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. GILLETTE, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5698.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the petition of William Harrington, of Louisiana, praying for a pension for services during the war of 1812, having had the same under consideration, respectfully submit the following report:*

It is in evidence that the claimant on the 2d day of December, 1871, filed his application for a pension in the office of the Commissioner of Pensions, and that the same was rejected on account of insufficient service, sixty days' service then being required under the law.

In March, 1878, the law was amended, requiring but fourteen days' service to obtain a pension. Under the amended law the claimant again filed a declaration on the 11th day of June, 1878, and the same was rejected on account of "want of proof of service," the records not showing his name as borne upon the rolls of Capt. J. A. Le Blanc's company, Louisiana militia, war of 1812, in which said company and regiment he claims service. But it is also in evidence, from the statement of the chief of bounty-land division, that a land warrant No. 71723, of 160 acres of land, was granted him for said service, and was issued on the affidavits of two comrades, who testified to his service in said company and regiment in said war for a period of more than fourteen days.

In the opinion of the committee this evidence is sufficient to entitle him to the relief prayed for, and they therefore return the petition to the House and recommend the passage of the accompanying bill.



JUDITH BROWN.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GILLETTE, from the Committee on Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 4264.]

*The Committee on Pensions, to whom was referred bill H. R. 4264, having had the same under consideration, respectfully beg leave to report :*

From a report upon this case, made by the Commissioner of Pensions at the request of this committee, it appears that Judith Brown is clearly entitled to the sum of \$66.09, but that legislative action, as proposed by this bill, is rendered necessary by sections 4719 and 4718, Revised Statutes. The letter of the Commissioner of Pensions is made a part of this report, and in accordance with the reasons therein stated your committee return the bill to the House with the recommendation that it be passed.

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,  
Washington D. C., February 3, 1880.

SIR: In the case of Margaret Duncan, widow of Charles, who was a revolutionary soldier, I have the honor to state that she was allowed a pension of \$80 per annum under the act of July 7, 1838, from October 24, 1838, to March 4, 1841, at which latter date all pensions under that act terminated; but, as the act of March 3, 1843, renewed them for one year, and that of June 17, 1844, continued them for four years longer, her pension was renewed, to commence March 4, 1843, and terminated August 29, 1846, the date of her decease. From March 4, 1841, to March 4, 1843, no pensions under the above acts have been allowed or paid. The pension to Mrs. Duncan was authorized to be paid to her seven children, but as the whereabouts of the child, Judith Brown, was unknown, she did not apply with the other children for her share, nor has it since been paid to her. The proportion of one-seventh, amounting to \$66.09, was withheld, and it cannot be paid (see section 4719 and 4718, Revised Statutes) without special legislation of Congress authorizing the same with an appropriation for the amount.

Very respectfully, your obedient servant,

J. A. BENTLEY.

Commissioner.

Hon. J. B. RICHMOND,  
House of Representatives.



JAMES HARRIS.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BLAND, from the Committee on Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 4197.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 4197) for the relief of James Harris, respectfully report as follows:*

The petitioner is now drawing a pension of \$8 per month under the act of 1878, granting pensions for fourteen days' service. He claims to have served sixty days, and for that reason desires his pension to take effect from the passage of the act of 1871. The case has been fully investigated at the Pension Office, and the claimant found not to have served sixty days, as required by the act of 1871. The committee find no evidence to induce it to reopen the question and go back of the decision of the Pension Office, and therefore report the bill adversely.

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ANNA HULSER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BLAND, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 162.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 162) granting an increase of pension to Anna Hulser, respectfully report as follows:*

The petitioner is drawing a pension of \$8 per month as the widow of John Hulser, a soldier of the war of 1812. She claims in her petition that the amount of her pension is not sufficient to support her in her old age, being eighty-eight years old. There is nothing in the petition showing that her husband was wounded in the service, or contracted any disease therein, so as to render him less able thereby to support himself and family during his life-time; nor are there any other equities to take this case out of the general rule, or to warrant the increase asked for. The bill is, therefore, reported adversely, with the recommendation that it lie on the table.





ELIZABETH MILLER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BLAND, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2912.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 2912) for the relief of Elizabeth Miller, having considered the same, report as follows :*

The claimant is drawing a pension of \$8 per month under the act of February, 1878. She desires arrearages of pension, to date from the act of 1871. On account of the date of her marriage she was not subject to a pension under act of 1871, and there is no evidence before the committee of a special character showing any good reason for taking her case out of the operation of the general law upon this subject. The committee therefore report adversely, and ask that the bill do lie upon the table.



THOMAS GRAHAM.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BLAND, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2988.]

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the bill (H. R. 2988) granting increase of pension to Thomas Graham, respectfully report as follows :*

The claimant is now drawing a pension of \$8 per month under the act of 1878, giving pensions to the soldiers of the war of 1812 who had served as much as fourteen days in said war.

There are a few communications on file in the case stating that the claimant is totally disabled and has been bed-ridden for several years. Upon this ground the increase is asked.

The law makes no distinction as to the degree of disability or the pecuniary condition of those embraced in its provisions. The presumption is that all the soldiers of the war of 1812 are now old and in feeble health. The granting of a pension of \$8 per month to them may also be regarded as a presumption on the part of Congress that they are for the most part poor and need such aid. No general law could be framed so as to provide for the many degrees of ill-health or poverty of a whole class of pensioners. It would be as utterly impracticable to draw these fine distinctions of supposed merit in framing special bills of relief. It would be hard to adjudge or measure the degree of poverty or disability in the many cases that would arise should such a rule be adopted as a guide in general or special legislation.

For the reasons above set forth it is recommended that the bill be reported adversely.



ELIZABETH KURTZ.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BLAND, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3141.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3141) granting a pension to Elizabeth Kurtz, beg leave to report as follows :*

The claimant is now drawing a pension under the general law. This bill would not, if passed, give claimant any further relief, and was evidently introduced under a misapprehension. The committee, therefore, report the bill adversely.



SARAH PARISH.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BLAND, from the Committee on Pensions, submitted the following

REPORT:

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the petition of Sarah Parish, respectfully report as follows:*

The petitioner is now a pensioner, drawing \$8 per month, under the act of 1878. She claims in her petition that her husband was wounded in the wrist at the battle of Queenstown, and during his lifetime drew a pension therefor. Claimant asks arrearages of pension from the death of her husband. There is no evidence or statement of the time of the husband's death. The committee have no evidence before them except the petition of claimant, and there is nothing in the petition of a special character except the petitioner is poor and seventy-eight years old. Congress intended to provide for this kind of case by the act of 1878, referred to, and by virtue of its provisions claimant is drawing a pension. The committee therefore report adversely.

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MARY B. KIRBY.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CABELL, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5699.]

*The Committee on Pensions, to whom was referred the petition for relief of Mary B. Kirby, widow of Reynold Marvin Kirby, brevet major First Regiment United States Artillery, who died, while in line of duty, from disease contracted in the service, having had the same under consideration, respectfully submit the following report (accompanied by a bill, the passage of which they recommend):*

It is in evidence that the said Major Kirby, husband of the petitioner, was a distinguished officer of the United States Army. The records of the War Department, and other evidence before the committee, show that on the 18th day of April, 1812, he was commissioned by Governor Elbridge Gerry, of Massachusetts, as a lieutenant in a regiment of the Second Brigade, Ninth Division of Massachusetts Militia. That on the 9th day of July, 1813, he was commissioned by the President a third lieutenant in the Third Regiment United States Artillery. That on the 1st of October, 1813, he was commissioned a second lieutenant in the same regiment, and on the 15th of August, 1814, he was brevetted first lieutenant for "gallant and meritorious conduct during the siege of Fort Erie." That on the 17th of September, 1814, he was brevetted captain for "his gallantry and good conduct in the sortie from Fort Erie." That in the "peace establishment of 1815" he was retained as second lieutenant in the Corps of Artillery. That on April 29, 1816, he was appointed assistant adjutant-general, with brevet rank of major, and assigned to duty on the staff of General Brown, at Sacket's Harbor, N. Y., and thence transferred to staff of General Ripley, commanding Division of the South, and thence, on 7th January, 1818, transferred to staff of General Macomb, at Detroit, Mich., commanding Division of the North.

The office of assistant adjutant-general of the Army having been abolished at the reduction of the Army in 1821, he was assigned to the First Artillery as a first lieutenant, to rank as such from March 23, 1818, being the rank to which he would have succeeded by regular promotion in the Corps of Artillery. That on 5th of August, 1824, he was commissioned a captain in First Regiment United States Artillery, and on the 17th of September, 1824, promoted to brevet major for "ten years' faithful service."

It is also in evidence that Major Kirby participated in many engagements which shed luster upon his character as a brave and gallant soldier, among which were the battle near Cornwall, Canada, on the 11th of November, 1813; the battle of Chippewa, 1814; the battle of Lundy's

Lane, July 25, 1814; and the siege of Fort Erie, in 1814, where, as an aid to General Ripley, "he received him in his arms when he fell wounded, and was twice brevetted for gallant service during that siege."

It is also in evidence that he commanded the United States troops sent from Fortress Monroe to suppress the negro insurrection in Southampton County, Virginia, in the year 1832, under the negro leader Nat. Turner, and in the same year he was with General Scott in Charleston, S. C., in defense of the government during the nullification excitement; that in the years 1836, 1837, and 1838 he was actively engaged in the Florida war with the Seminole Indians, during which service he contracted a disease which terminated his life. From May to August, 1838, under General Scott, he took part in the removal of the Cherokee Indians. After this service he was transferred with his command to the northeastern frontier, where he was intrusted with important and delicate duties relating to the correspondence between the American and British authorities during the "Maine boundary-line" dispute with Great Britain, and for the manner in which he discharged this duty was complimented by General Scott in general orders. It is in evidence that he was afterwards transferred to the command of Fort Sullivan, near Eastport, Me., where, on the 7th day of October, 1842, he died of pleurisy, the result of his service in the Florida war.

Although from the death of Surgeon Wharton, who attended him in Florida, and also the deaths of Surgeons Sprague and McPhail, who subsequently attended him, it is made impossible to obtain the customary medical certificate, yet it is the opinion of the committee, from the evidence submitted, that his death was the result of disease contracted in the line of duty while in the military service of the government.

The evidence submitted establishing this fact is as follows, to wit:

1. Affidavit of Catharine Russell, of the town of Palatka, county of Putnam, State of Florida, who, qualifying before the county judge of said county, with the seal of his court affixed, swears that she was well acquainted with the husband of the petitioner during the Seminole war in that State; that in 1836 he was relieved from active duty in the field, in consequence of a severe attack of fever contracted in the swamps; that his sickness was long and severe; that she personally attended him during his illness, and that her personal knowledge of him continued therefrom and to the day of his death; and that she has reason to know from personal knowledge that he never recovered from said illness.

2. Affidavit of Frances M. Webster, of York, county of York, State of Pennsylvania, who swears that she is the widow of the late Col. L. R. Webster, of the United States Army; that she was a resident of Saint Augustine during the Florida war with the Seminoles; that she was personally acquainted with the late Maj. Reynold M. Kirby, of the First Regiment United States Artillery; that in the year 1836, while on active duty, the said Reynold M. Kirby was, by reason of sickness, relieved from duty in the field and retired to Saint Augustine, and was under medical treatment at the house of her father, Judge J. L. Smith. The health of Reynold M. Kirby was greatly impaired by his exposure and illness as above stated, and caused his death.

3. Affidavit of George R. Peake, of Kansas City, Mo., who, under seal of a notary public, swears that he was for a long period of time personally acquainted with the late Major Kirby; that he served his country faithfully in the Indian wars in Florida, and there impaired his health by disease contracted in the swamps, and in this condition was ordered to Eastport, Me., where his health was completely sapped by the sudden transfer from the glades of Florida to the colder latitude of Maine, where

he died in the prime of life, aged 52 years, as he unquestionably believes from devotion to the service of his country and in obedience to the orders of his superiors in command.

4. Affidavits of G. E. Hawes and E. S. Crill, who, under the seal of the county court of Putnam County, Florida, having been sworn by the judge of said court, swear that they are medical practitioners of the State of Florida, and have been such, the former for thirty years and the latter for thirteen years, and as such are well informed as to the nature and character of the diseases incident to that country and climate. They further depose that it is a well-known fact to the medical profession that fever contracted in the swamps of that State always leaves the constitution, should the patient recover, more or less impaired; and that rheumatism, pleurisy, and other kindred diseases frequently result therefrom.

The Hon. J. T. S. Houghton, judge of the county court, certifies, under seal, to his personal knowledge of the above-named affiants, as highly credible persons.

It is in evidence that the petitioner, Mary B. Kirby, was married to the said Major Kirby on the 22d day of December, 1831, as shown by a marriage-bond of that date, and the testimony of M. Greter and Jane K. Peake filed before the committee, who were eye-witnesses to the ceremony.

It is also in evidence that at the time of the death of the said Major Kirby, his widow, the petitioner, was left with the care of five children, helpless and dependent. That she has not since remarried, but has remained a widow from the period of his death to the present time; that she is now, in her declining years, at the advanced age of sixty-six, in a needy condition and without means of support save a pension of eight dollars per month, which was granted her under the act of March 9, 1878, for services of her husband during the war of 1812, and which is totally inadequate to her support.

The pension laws governing this case are as follows:

Section 4732, Revised Statutes of the United States, is as follows:

The widows and children under sixteen years of age of the officers, non-commissioned officers, musicians, and privates of the regulars, militia, and volunteers of the war of 1812, and the various Indian wars since 1790, who remained at the date of their death in the military service of the United States, or who have received an honorable discharge and have died or shall hereafter die of injury received or disease contracted in the service and in the line of duty, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time he received the injury or contracted the disease which resulted in his death. But no half-pay pension shall exceed the half pay of a lieutenant-colonel, and such half-pay pension shall be varied after the 25th day of July, 1866, in accordance with the provisions of section 4712 of this title.

Section 4712 of the Revised Statutes, to which the foregoing alludes, is as follows:

The provisions of this title in respect to the rates of pension to persons whose rights accrued since the 4th day of March, 1861, are extended to pensioners whose right to pension accrued under general acts passed since the war of the Revolution and prior to the 4th day of March, 1861, to take effect from and after the 25th day of July, 1866; and the widows of Revolutionary soldiers and sailors receiving a less sum shall be paid at the rate of eight dollars per month from and after the 27th day of July, 1868.

Under the provisions of the foregoing acts, had the petitioner made proper application, she would have been entitled to a half-pay pension of a captain of artillery, which at the time of the death of the husband of the petitioner was as follows, as appears from a statement of the Second Auditor of the Treasury Department, to wit:

It appears from the books of the Second Auditor of the Treasury Department that the late Capt. R. M. Kirby, First Artillery, received as pay and emoluments for the

month of September, 1842, being the month immediately prior to his death, the sum of \$143.50.

This statement bears the signature of the Second Auditor, and is among the papers filed with the committee. Thus it appears she would have been entitled to a half-pay pension of \$71.75 per month, from the month of September, 1842; but having failed to make such application, she is barred by the provisions of section 4713, which provides—

That in all cases in which the cause of disability or death originated in the service prior to the 4th day of March, 1861, and an application for pension shall not have been made within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing, by the party prosecuting the claim, the last paper requisite to establish the same. But no claim allowed prior to the 6th day of June, 1866, shall be affected by anything herein contained.

And also by the provisions of section 4 of the act approved March 3, 1878, amending the laws granting pensions to the soldiers and sailors of the war of 1812, and their widows, and for other purposes, which provides as follows:

That all applications for pensions of the classes provided for in this act heretofore, or which may hereafter be made, shall be considered and decided as though made under this act.

Thus the petitioner is unable to avail herself of the provisions of law that would have given her the relief she prays for in the bill now before the committee had she made proper application.

It is in evidence from the petition of the claimant that the laches were occasioned by the following causes, to wit:

Your petitioner has for years been trying to get the justice now asked; but owing to the death of several who had charge of the matter, and the loss of her important papers, and other consequent impediments, and the late war, and all its troubles and obstacles, she has never had a hearing by any Pension Commissioner or committee of Congress. \* \* \* That many of her papers were mislaid and lost since 1853 until the month of March, 1878, which facts she states to remove all prejudice against her claim because of delay which she could not possibly avoid nor overcome.

The petitioner thus appeals to Congress as the only means of relief, and the committee, in view of all the facts in the case, and the foregoing testimony, and the peculiar hardships it presents, and in view of the advanced age of the claimant and the distinguished services of her husband, who for more than thirty years was actively engaged, with signal ability, courage, and patriotism, in the military service of his country, during which he sacrificed his life, and left the petitioner a widow with the care of five helpless and dependent children, whom she raised and supported without aid from the government, although clearly entitled to the same, and in view of her present needy condition, are of opinion that the evidence is such as to establish her claim upon the government for relief, and they therefore report to the House the accompanying bill, and recommend the passage of the same.

FRANCES S. DYER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. DIBRELL, from the Committee on Pensions, submitted the following

### REPORT:

The Committee on Revolutionary Pensions and War of 1812, to whom were referred the petition and bill for the relief of Frances S. Dyer, having had the same under consideration, respectfully report the same back, and recommend that the bill do not pass.

The act of 1871 granting pensions to soldiers and widows of the war of 1812 on sixty days' service required a widow to have married prior to the treaty of peace. The act of 9th March, 1878, removes this restriction. But your committee see no cause for deviating from this law in special cases, and therefore decline to recommend the passage of this bill.

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MARY J. FRANCIS.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. DIBRELL, from the Committee on Pensions, submitted the following

## REPORT:

The Committee on Revolutionary Pensions and War of 1812, to whom was referred the petition of Mary J. Francis for a pension, having had the same under consideration, respectfully report the same back, with recommendation that the relief be not granted and that the petition be laid on the table, because the law does not give pensions to adult heirs, such as would be beneficiaries in this case.

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MARY L. CLEVELAND.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. DIBRELL, from the Committee on Pensions, submitted the following

REPORT:

*The Committee on Revolutionary Pensions and War of 1812, to whom was referred the petition of Mary L. Cleveland, widow of John H. Cleveland, for arrears of pension from 1812 to 1871, having had the same under consideration, respectfully report:*

That while the government and Congress have been remarkably liberal in granting arrears of pension, and while this lady is well indorsed and recommended in her application, and is doubtless a most worthy and estimable old lady, yet they think the precedent in her case would be a bad one—is not justified by existing law. They therefore recommend that said petition be not granted, and rejected.



MARTHA ALLEN LACHMAN.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 3227.]

*The Committee on War Claims, to whom was referred the bill (H. R. 3227) for the relief of Martha Allen Lachman, submit the following report:*

The claimant alleges that Henry Lachman, who was her husband, was employed during the entire term of the war of the rebellion as a general detective, and in the course of his service was instrumental in recovering a large amount of valuable property, and in obtaining information of great benefit to the government; that during the battle of South Mountain, while in a train of cars that was shelled by the Confederates, he was struck on the head by a fragment of a shell, inflicting a severe wound, from the effect of which he never wholly recovered; that he was taken to a military hospital at Middletown, Md., where he remained two months and sixteen days in a state of frantic delirium, caused by the concussion of the brain; that he afterward returned to his duties, but retained the nervous excitability consequent upon his wound, and after the close of the war, from time to time, showed signs of mental aberration until he was removed to an insane asylum; that for two years and eight months prior and next preceding the filing the petition he has been an inmate of various asylums in Maryland and Pennsylvania, and is now hopelessly insane, *i. e.*, at the time of filing the petition in 1877; that, during his lucid intervals, his memory of events was clear and distinct, and he declared that, although promised compensation, he had never received any pay whatever; that while he was in the service of the United States, and until he was sent to the asylum, or a few months before, he was in receipt of a small income from his family in Germany, which, in addition to his own earnings, made him indifferent to pecuniary compensation from the government, more especially as he was ambitious of an official position under it, which he believed his unrequited services would more easily secure; and the petition alleges its object to be to secure compensation to afford him comforts, which the petitioner alleges she is unable otherwise to procure.

The evidence filed shows Henry Lachman to have died May 17, 1879, in the Pennsylvania State Lunatic Asylum at Harrisburgh, and this bill seeks to provide for Mrs. Lachman, the petitioner, in her own right, or as his representative.

The committee have given this case a careful investigation, not only upon the proofs filed by the claimant, but have dispatched a special messenger to Philadelphia, and to the different hospitals where Lachman was treated and where he died, to learn all the facts in the case,

that a proper determination of the case could be made, and the proofs and reports so procured are filed with the papers in the case and will be considered in its discussion.

It is quite evident that Lachman was employed as a detective, as is alleged; but it is equally apparent that he entered upon such service as a volunteer, and whether he received compensation for any part of such service out of the secret fund used and applied for such service is not established affirmatively or negatively. But it is not a violent presumption that had Lachman been employed for pay, he either received his compensation or would have laid claim to it at some time earlier than 1876. Perhaps the more natural conclusion would be that if he did not receive any pay directly, nor make any claim for it, he was granted privileges in the way of trade or opportunities for making money or acquiring property that were by him accepted in lieu of any stipulated pay. We think the evidence will sustain the following conclusions:

1. That, though Lachman performed service, he never expected nor claimed any pay other than he received for his services.

2. That his affidavit filed in the case was signed by him unwittingly, and the whole idea of claim originated in the brain of the present claimant, and without other foundation than a desire to get some money.

3. That the alleged wound in the head and consequent result are sheer fabrications, as a means to more readily get money by appeal to the patriotic as well as sympathetic impulses of Congress.

The first point is established by inferences resulting from his neglect or omission to claim pay, while the accompanying letters from General Halleck and the Secretary of the Treasury show he did endeavor to secure a position under the government; but arrears of pay do not seem to have been alluded to in any manner.

The second point is fully established by reference to the date of the affidavit signed by him January 11, 1877, and a comparison of its statements with his conduct and statements prior thereto with the statements in the petition of the claimant, and with her statements to the agent employed by this committee, and with the hospital record where he was restrained at the time, and the second branch of it by the statement made by her upon his entry into the State Lunatic Asylum in 1877, and her action since that time based thereon.

The evidence of non-payment and of promise to pay are stated in the affidavit of Lachman, made January 11, 1877, for the first time, twelve years after the service terminated and fourteen years after the alleged injury which it is said proved so fatal.

The petition to Congress for pay or relief was first made in November, 1877, and when Lachman was an inmate of a lunatic asylum, hopelessly insane. In that petition the wife alleges he is hopelessly insane, and has been an inmate of an asylum for two years and eight months, but had lucid intervals. This last statement was made, it is presumed, so as to cover the date when the affidavit was signed. The affidavit is signed before an alderman of the city of Philadelphia, and what is something of a coincidence, before the same man who performed the marriage ceremony between the petitioner and her husband July 23, 1872.

Another circumstance is quite significant, Lachman, at the date of making the affidavit, was an inmate of the Kirkbride Hospital, under treatment for insanity.

The petition and affidavit each state he was wounded in the head with a fragment of shell at South Mountain in 1862, and from that cause trace his mental condition—never restored after the alleged injury.

The hospital records at the time of his entry show, among other things, as follows, under date of July 20, 1876:

First symptoms noticed in January last: \* \* \* appears stupid, but talks quite rationally; best with his wife; mind and body have failed. His delusions were those of flying, going to Egypt; he had an idea he had immense wealth. Is naturally quiet, but when stopped from tearing his clothing gets into a fearful passion. He says an uncle and two children were insane. \* \* \* Wounded with a shell in the leg in the battle of South Mountain.

Again, the report of F. F. Corson, assistant physician, states:

In the hospital records there is no note of a fracture and depression of the patient's skull, and it is my opinion that if an injury of any importance had existed it would have been discovered during his stay in the hospital. The inquiry is always made when a patient is brought to the hospital whether or not he ever received any injury of the head.

It will also be seen by reference to the report made to the committee by their investigating agent that the statement of no wound upon the head is corroborated by the declaration of the employé of the hospital who had him in especial charge, shaved him, and cut his hair in this hospital for thirteen months.

It will also be found in the same report that during all the time he never talked of money due or owing from the government, but she, *i. e.*, the present claimant, talked about it.

Before the effect of this evidence is stated it is well to state the fact that the petitioner did not marry Lachman until July 23, 1872. So that all she states in her petition of transactions and events prior to that time are mere heresay at the best. And also to group in the same connection her statement to the agent of the committee on January 14, 1880, on file in his report in this case:

Prior to 1872 Mr. Lachman traveled extensively for Montreal tobacco houses; visited Europe in the interest of one of these, and disbursed large sums of money. Returning to the United States, he married her in July, 1872; engaged with a Cincinnati firm as traveling salesman; retained his situation nine months, at a salary of \$1,800 per annum and expenses; and then opens business as a retail dealer in a part of his employer's warehouse; and then comes to Baltimore, Md., and enters into business until "softening of the brain," in 1876, eleven years after the wound with the shell.

The effect of this evidence, on the minds of the committee, entirely destroys the material statements both of the petition and of the affidavit in support thereof, in this: It shows that he was not injured as alleged. It shows the cause of his mental derangement did not result from injuries received in the service of the United States, but was hereditary in his family. It shows he made no claim during the identical period when he purports to have made his affidavit, and when, had it been on his mind, it would have cropped out among his delusions; and it shows a mental condition unfitted to the making understandingly affidavits, which unsupported should control our action; and shows, in addition, the statement of the petitioner to be untrue as to the continuous mental aberration, or a tendency thereto, after the happening of the alleged injury in the head; for it needs little argument to demonstrate that a man capable of discharging the duties of places of responsibility, such as she alleges he filled, was not of an unsound mind, or suffering from softening of the brain, incipient or otherwise, and tend strongly to sustain the third point made by the committee, as hereinbefore stated, and to which point or conclusion of the committee additional evidence is cited in support thereof, and to their mind conclusive evidence.

It will be borne in mind that up to the time of the commission of the insane man to Kirkbride hospital in 1876, and until after his entry and

a declaration of his case was made and entered on the record, the *gravamen* of the claimant's present claim had never been put forth; but while the insane man was in hospital she began to talk of money and pension for wound. In January, 1877, she procured her husband's affidavit, putting forth the wound as the cause of his mental aberration, and stating the existence of a promise on the part of the government to pay him which had not been fulfilled. Now, if we follow the case closely, the steps taken by the claimant to bolster up the claim she evidently had set about making will become quite apparent, and with them her manifest purpose develops.

From the records of the Pennsylvania State Lunatic Asylum, to which the claimant's husband was transferred August 24, 1877, will appear the following statement, entered by the claimant in her own handwriting:

First symptoms occurred eighteen months ago; delusions on religious subjects and that he is possessed of great wealth. Was wounded by fragment of shell at battle of South Mountain, inducing an attack of over two months. In July, 1876, he was entered into Pennsylvania Hospital, then he was violent and destructive; he passed away the following September, when he became very robust. Since April he has been perfectly well physically, but subject to delusions; always gentle and easily controlled. Never attempted suicide. No hereditary known. Cause of attack pecuniary difficulty. Has been at Pennsylvania Hospital during last year; the treatment was merely regulating his habits.

By comparison of this statement with the daily record of the Pennsylvania Hospital, it will be seen to be largely a fiction.

The attending physician's diary, which is also on file, from the last hospital where he was entered as above, shows him to be a lunatic from the date of his entry to his death; and does not seem to commend the claimant to us by reason of her possessing virtuous qualities above suspicion to say the least, and would seem to attribute the mental derangement of the husband, in a degree at least, as springing from such cause.

The reference to her statement on the entry of the husband to the hospital, it will be seen, varies considerably from the former statement and from the facts, but, as it were, commences paving the way for this claim, which was filed shortly after.

In view of the facts connected with this case, the committee cannot find warrant for appropriating any money to this claimant; and therefore report adversely to the bill and recommend it be laid upon the table.

DABNEY WALKER.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 1135.]

*The Committee on War Claims, to whom was referred the bill (H. R. 1135) for the relief of Dabney Walker, submit the following report :*

This bill is a claim for \$1,525 balance due, after deducting \$360 paid, for services rendered as scout and guide to the Army of the Potomac.

Bills of this class are easy to be made, and, *if passed upon the evidence of the claimant alone, upon all the material facts*, corroborated by general statements of others, will prove a Pandora's box.

This claimant is a colored man; he undoubtedly did good service in that indescribable position covered by the term scout, which means usually a species of attaché to headquarters waiting for a job and supported at government expense, receiving from time to time such compensation as the officer to whom he is attached, or to whom he attached himself, thinks is a suitable compensation for any particular service rendered. If their own statements are to be relied upon, they are dreaded more by the enemy than the Army; they perform deeds of wondrous prowess, and always have a price upon their heads. A scout who failed to have that in his history would be a very common sort of a fellow indeed.

The authority that paid \$360 would pay the balance if it was due. General King lived years after the war, General Patrick still lives, General Hooker deceased but a few months since, and General Grant has certainly been in position to have secured him his just recompense.

The difficulty the claimant seems to have met with was the barrenness of his facts. They may do well for war books and pamphlets, but when they are to be weighed as evidence they are little worth. He produces no reliable evidence of employment except his statement, confirmed by the fact that \$360 was paid for services; but who knows of his employment for a term beyond that paid for? The committee are unable to find the evidence which would authorize them to assume a contract and then assume length of service under it. The letters and commendations of distinguished gentlemen, whose information respecting the claimant is derived from himself, may do for some purposes, but ought not to have any weight in the determination of a question of fact upon which a claim depends.

The committee report adversely to this bill, and recommend that it do lie upon the table.





MILTON KENNEDY.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 561.]

*The Committee on War Claims, to whom was referred the bill (H. R. 561) for the payment of \$800 to Milton Kennedy, for night services of the steamboat Piketon, submit the following report:*

The claimant, Milton Kennedy, alleges, and it is supported by the proofs, that in January, 1862, the steamer Piketon was employed by Capt. Jacob Heaton, commissary subsistence and acting assistant quartermaster, under a verbal contract to transport troops and supplies on the Big Sandy River, from Catlettsburgh to Pikeville, Ky., for which he was to receive \$50 per day, and that a day's service was stipulated to cover and include only from daylight to dark each day.

And afterwards, on the 1st day of February, 1862, his contract at the same terms and upon same conditions was renewed with Capt. Ralph Plumb, acting quartermaster. The authority to make the contract by each of the officers making it, on behalf of the government, is conceded.

It appears that under the first contract with Captain Heaton service was performed from January 16 to January 31, 1862, inclusive, for which a voucher was given for \$800, being for the full time, at \$50 per day, which sum was paid to the claimant May 8, 1862, in full, and so receipted by claimant, and no claim made for extra service. And it also appears that under the second contract service was performed in the month of February, 1862, twenty-eight days, and a voucher was given for \$1,400, being for the full time at \$50 per day, which voucher was paid March 29, 1862, and receipted in full by the claimant, and no claim made for extra service.

In February, 1871, nine years after the settlement and receipt of vouchers for service, the claimant files a claim in the Quartermaster's Department for compensation for sixteen night's service, during the time covered by his vouchers, at the rate of \$50 per night. This claim was rejected by the Second Comptroller, February 5, 1862, in which he says:

No claim was presented when payment of these vouchers was made for any additional service, and there is no evidence contemporaneous with the alleged service that any further indebtedness against the government existed at that time. \* \* \* It is alleged, and the testimony confirms the allegation, that night service was performed by the claimant with his boat. The witnesses state that this service occupied twenty-one nights, but on five nights a part of the night only was the boat employed. \* \* \* There is no certificate by a quartermaster for this service, and there is no official evidence as to the number of nights the boat was employed. Captain Plumb and General Garfield both state there was some night service. \* \* \* It is proper to observe that the testimony now filed consists of the statement of persons who trust to their memory for the facts narrated, a period of nine years having elapsed since

the events transpired. \* \* \* Why claimant did not present his bill for this service is explained, but, in my opinion, insufficient. \* \* \* He, however, does say that he demanded a settlement of Captain Plumb and others, but that they put him off with the plea that they had a great many accounts to settle. But, as already remarked, this allegation, made in July, 1871, more than nine years after the claim is said to have accrued, is unsupported by any record proof or contemporaneous evidence, or by the evidence of anybody besides himself.

After this opinion of the Second Comptroller was given, and the claimant, through his attorney, notified thereof, an application was made to reopen the case for additional proofs, which was granted. Additional proofs were filed, and the claim was again rejected on the 26th of January, 1874, in a written opinion of the Second Comptroller, bearing date on that day, in which the Comptroller says, in relation to the additional evidence, "It is merely cumulative, and in no wise modifies the facts as they existed and appeared in the evidence originally presented." And referring to the settlement and payment for the period covering the time in which the alleged night service was rendered, he says:

Payment in full for that period was made. No other claim was made at the time of settlement, and no notice of a claim to be presented at a future time was given. Under these circumstances it must be presumed that the payment of the money by the disbursing officers representing the government and the receipt thereof by the claimant were in accordance with the terms of the contract. And the sale in Clyde's case, decided by the Supreme Court, since the decision of this office of February 5, 1872, sustains the disallowance of the claim.

The claimant's case is now presented to this committee upon the same proofs, and no other, submitted to the Second Comptroller. It has been twice rejected by a tribunal having jurisdiction, and presents no consideration to this committee suggestive of any new reasons for its allowance. The committee, therefore, see no reason to deviate from the rule established by them touching cases that have been previously determined; but say, after a full examination of the matter, were the questions involved original, the decision of this committee would be in conformity with the views expressed by the Second Comptroller.

The committee, therefore, report adversely to the bill and recommend that it do lie upon the table.

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FEMALE ACADEMY AT RICHMOND, KY.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2613.]

*The Committee on War Claims, to whom was referred the bill (H. R. 2613) for the benefit of the Madison Female Academy, located at Richmond, Ky., make the following report:*

The petition filed in support of this bill alleges a claim against the Government of the United States—

For rent of buildings and grounds from the 30th day of August, 1862, to the 25th day of June, 1863 .....	\$4,097 22
For cash paid for repairs rendered necessary by occupancy of premises by United States forces.....	5,086 20
For rent of premises from the 25th day of June, 1863, to the 15th September, 1864 (14 months and 20 days), being for time consumed in making repairs rendered necessary by the occupancy as aforesaid .....	6,141 69
For damage to trees, shrubbery, plants, flowers, fruit and shade trees ...	5,000 00
	<hr/> 20,325 11

And shows that the occupancy charged for from August 30, 1862, to June 25, 1863, was by the military authorities for hospital service, and that claim was made against the government therefor, and an award made in favor of the claimant for about \$10,000, which was paid and received.

This amount fully discharges all claims for rent and for restoring the building to its condition before military occupancy.

The remainder of the claim is one for damages, notwithstanding part of it is itemized as rent.

The government has never assumed, and ought not to assume, payment for pillage, or the wanton depredations of soldiers, under which heads so much of this claim as has not been paid will fall.

The departments have considered the claim and audited it, as appears from the papers, and paid it as audited. This committee decline to reopen the case, and report adversely to the bill, and that it be laid upon the table.



W. W. WALDEN.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

## REPORT:

[To accompany bill H. R. 3501.]

*The Committee on War Claims, to whom was referred the bill (H. R. 3501) to pay W. W. Walden for building destroyed by fire while occupied by United States soldiers, make the following report:*

The affidavit of the claimant states:

That he was a resident of the city of Chillicothe, Livingston County, Missouri, in the year 1861, and that he has a perfect knowledge of Colonel Williams, of the Iowa Third Regiment Volunteers, coming to the city; entered into and took possession of the Chillicothe House, or hotel, dispossessing one Hamilton Crews of the possession thereof, for the purpose of using said house as a hospital and military headquarters, and was so used by said regiment during their stay—about two months—when it was turned over by the said Colonel Williams to Col. J. S. Tindall, of the Missouri Twenty-third Regiment, for the same purpose, and so used by said regiment until the 3d day of December, 1861, when said building caught fire and was burned down. *The fire was caused by a box of ashes taken up by the steward and set in a closet, and was accidental.*

He then fixes the rental for five months at \$500, and the value of the building destroyed at \$5,000, and alleges the title in Hamilton Crews; and that after the fire the property was appraised under direction of General B. M. Prentiss, and its value certified by General Prentiss and Colonel Tindall; that the claim was assigned to him by Crews, and that in 1872 he turned all the papers over to one E. R. Mason, a claim agent in Washington, who has disappeared, and no trace can be found of him or the papers.

There are on file corroborative affidavits, all made in 1876, fifteen years after the loss.

There are some notable omissions, quite suspicious, in the presentment of this claim. Hamilton Crews, the alleged owner at the time of the fire, is conspicuously silent, and his silence unaccounted for. What was his status in the great struggle just then in its beginning?

There is no evidence that can be considered evidence on such a question showing title in Hamilton Crews; there is no evidence from either Colonels Williams or Tindall, nor from General Prentiss; nor is there any evidence as to the consideration paid for the alleged assignment. It may be said, this last omission is of little consequence. We think quite the contrary. The examination of this claim may, and in fact upon the claimant's affidavit, shows no legal claim, but rests on an appeal to equities, which will rarely if ever be extended to one buying a claim on speculation for a nominal consideration.

But, independently of these considerations, the affidavits state no

facts sufficient to make the government liable. Flagrant war existed in Missouri, and the history of the period brings to our knowledge the struggle that existed to keep Missouri in the Union as a State organization, while thousands of her citizens joined the Confederate forces, and a large number of those not so joining sympathized heartily with the rebellion.

The occupation of buildings for military purposes in such territory, to protect Union sentiment and suppress rebellious manifestations was a military necessity, and that necessity conferred the power of impressment, and made seizures which otherwise were violations of individual rights sacred in peace; in war lawful and proper.

The burning was accidental; no negligence is charged!

And there is another complete answer to this claimant: The statute makes all assignments absolutely void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof (10 U. S. Stat. page 170), and the wisdom and policy of the statute considered and sustained *U. S. v. Gillis*, 95 U. S. Rep., 407; *Spofford v. Kirk*, 97 U. S. Rep., 464.

The committee, therefore, upon the several grounds assigned, report adversely to the bill and recommend that it do lie upon the table.

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JOANNA W. TURNER.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1123.]

*The Committee on War Claims, to whom was referred the bill (H. R. 1133) for the relief of Joanna W. Turner, submit the following report:*

If Congress were an eleemosynary corporation, and the Committee on War Claims almoners of public charity, this bill would be entitled to receive serious consideration.

In the Forty-fifth Congress, this claimant, having determined in her own mind that an emergency had arisen whereby she would be justified in making claim for pay for services voluntarily rendered in the goodness of her heart to the sick and wounded of the United States from April, 1861, to October, 1864, as a nurse, procured the introduction of a bill (H. R. 4189, Forty-fifth Congress) to pay her an amount equal to the pay and allowances of a second lieutenant for three and one-half years' service performed by her in the floating and other hospitals of the United States, and also to pay her the sum of \$960 expended by her in such service. At the present Congress the bill asks a round sum of \$1,163.40 for service as nurse.

The period of gestation of this claim was fourteen years, and its birth not until all the generous and patriotic sentiment which sent woman as an angel of mercy to the sick, suffering, and dying had been soothed into quietude and the sordid attributes of our nature assumed ascendancy.

The claimant's husband was a surgeon and afterwards a colonel of colored troops. She accompanied him to the field and did noble service, well attested, and no doubt her memory is dearly cherished by the living, to whose wants she was a ministering angel.

The committee see the god of avarice seeking to supplant the angel of mercy, and they are unwilling to aid him in the accomplishment of his purpose.

The committee report adversely, and that the bill do lie upon the table.





ELIZA E. HEBERT.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

## REPORT:

[To accompany bill H. R. 483.]

*The Committee on War Claims, to whom was referred the bill (H. R. 483) for the relief of Mrs. Eliza E. Hebert, submit the following report:*

The committee have given this case a careful consideration and find the following to be its history: On the 24th day of January, 1873, the claimant, Eliza E. Hebert, filed her petition with the Commissioners of Claims, alleging that she has a claim against the United States for property taken for the use of the United States Army as follows:

5,000 barrels corn, at \$1.50.....	\$12,000 00
500 cords of wood, at \$6.....	3,000 00
100 chickens, at \$1.....	100 00
200 turkeys, at \$2.....	400 00
30 hogs, at \$10.....	300 00
5 milch cows, at \$100.....	500 00
8 oxen, at \$50.....	400 00
5 horses, at \$160.....	800 00
4 mules, at \$125.....	500 00
Unknown quantity of lumber, consisting of hogsheads, staves, pickets, and posts, value estimated.....	5,000 00
	<hr/> 23,000 00

And that the items in the above schedule were of the full value therein set forth, and were removed to Indian Village and Plaquemine and were used by or for the troops of General H. E. Paine's brigade. That no voucher, receipt, or other writing was given therefor; that the petitioner and Jules J. Hebert resided, at the time said claim accrued, at Iberville Parish, Louisiana; that your petitioner and her husband were the original owners of said claim; and that your petitioner is the present owner of the same, she having an assignment of her husband.

This petition was verified by Eliza E. Hebert before A. O. Aldis, one of the members of said commission. The names of the persons given and relied upon to prove facts other than loyalty are named as follows: Celestine Martin, colored, New Orleans; Sarah Martin, colored, New Orleans; Achille Lewis, colored, New Orleans; Lizzie Lewis, colored, Baton Rouge.

The next phase of the claim will be found in the report of the Committee on Claims in the Senate of the United States, Forty-third Congress, second session, report No. 587, where it will be seen the claim had

grown between January 24, 1873, and February 1, 1875, to the sum of \$47,975 from \$23,000, as first presented.

The Senate Committee, in their report referred to, say, among other things:

The order under which the property was taken, issued by General Paine, expressly requires the officers authorized to take property to give receipts for it, and requires the quartermaster and the commissary, to whom it was turned over, to take it up in their returns and account for it according to law. \* \* \* There are no receipts, and it is stated that none were given by the officers who took the property. Inquiries addressed to the Quartermaster-General and the Commissary-General have elicited replies stating that neither of the officers have charged themselves with any supplies from Mrs. Hebert's plantation. We are not informed whether these officers are still living or whether any effort has been made to secure their testimony. In the absence of their testimony that which is submitted is not of the most satisfactory character. It consists principally of the statement of servants, some of whom were formerly slaves on the plantation, whose estimates of the quantity and value of the articles alleged to have been taken we are not inclined to receive with implicit confidence.

There is some other testimony, it is true, but not of that satisfactory character which would justify the committee in recommending the payment of the large claim here made. We are brought to this conclusion moreover because the articles claimed for are of the class for which claims should have been presented to the Commissioners of Claims, appointed under the act of March 3, 1871. Petitioner states that she was not aware until last year that such claims were being paid, and, therefore, she did not prepare her testimony and submit her case. We are thus brought to the question in this case, whether the Committee on Claims, upon the simple allegation of petitioner's ignorance of that commission, will receive and consider claims which are now barred by the limitation of that act. \* \* \* We deem this case one which should be investigated by that tribunal, if it is decided to remove the bar of the statute. It would be peculiarly proper that the special agents furnished to those commissioners should make inquiry into the facts and circumstances alleged in this case, and the value of the stores taken, if there is to be an adjudication of the amount which should be paid for them.

With these views of the case, the committee do not feel warranted in setting a precedent, which would virtually invite the presentation to Congress of all the claims now barred from being heard by the Commissioners of Claims.

The committee are advised that under the suggestion made in the report just cited, an investigating agent on behalf of the government was sent to Louisiana, in 1875-'76, and made a full investigation, and reported the claim to be a fraudulent one, and that such report was transmitted to Congress, and was lost or purloined from the files of the committee.

The next phase of the case will be found in a brief report from this committee, first session Forty-fourth Congress, report No. 309, made by Mr. Conger, of Michigan, which concludes as follows:

From the best consideration your committee can give to this case, they believe and report that there should be paid to Mrs. Eliza E. Hebert, in full for all her claims, the sum of \$21,090; and report herewith a bill for that purpose, and recommend its passage.

The claim next appears in a report made in the second session Forty-fifth Congress, from this committee, No. 216, by Mr. Caldwell, of Kentucky, following largely the verbiage of the next preceding report; but, in estimating values, find the sum proper to be paid at \$23,150. This last report was made to the House on the 15th February, 1878; and, at this same session of Congress, Mr. Mitchell, of Oregon, from the Committee on Claims in the Senate, submits a report, No. 203, from which the following extracts are made:

The claim in this case for property taken, is as follows:

8,000 barrels of corn at \$2.50.....	\$20,000
1,500 cords of wood, at \$4.66½.....	7,000
For one lot of lumber, consisting of staves, heading, and pickets.....	10,000
For 1 pair of carriage horses.....	1,000
For 3 riding horses.....	500

For 4 mules, at \$300.....	1, 200
For 30 hogs, at \$30.....	900
For 5 choice milch cows.....	375
For 20 head of beeves.....	500
For 1 lot of poultry.....	100
For fencing on plantation.....	6, 000

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\$47, 975

And some of the evidence quoted in support of the claim is as follows:

John A. Dardenne, who testifies that he resided near Mrs. Hebert in 1863; that there she resided on her plantation, and that General Paine's command encamped near it; that she had stock on his place taken by officers detailed for that purpose by General Paine; that wood was selling at \$7 per cord, and corn for \$1.75 to \$2 per bushel; that he thinks the troops must have taken them, as their plantation was the first to their camp.

Mrs. E. E. Hebert, the claimant, who testifies that herself and family lived in 1863 on said plantation; that the live stock was taken and driven away; that the corn and wood were taken at different times, as needed; that after the war she "never knew until 1873 that claims were being paid, and that so soon as she found it out she went immediately to Washington, and was too late to enter it in the Southern Claims Commission, as she was unable to gather up the witnesses.

The committee, in the last report referred to, say also:

It appears from the record of the Southern Claims Commission that on the 24th day of January, 1873, Mrs. Hebert filed a claim there amounting to \$23,000. That was before the assignment to her, and of course she had no valid claim. Mrs. Hebert has filed in the Senate Committee on Claims her own affidavit, in which she testifies her husband was very dissipated and entirely neglected his business; that in filing her claim before the Southern Claims Commission she had no legal adviser; that she meant to have it cover only half of the property taken, which she believed to belong to her; that her husband stopped the prosecution of the claim in that tribunal, and gave her an assignment after divorce. The reason assigned why the claim was not filed by her husband within the time, in addition to the fact that he was very dissipated, is that he had been informed that the officers—General Paine, Major Olcott, and Captain Perkins—from whom he could gain proof were killed at the battle of Port Hudson; \* \* \* that the petitioner did not know the fact to be otherwise until she reached Washington and met General Paine here, who informed her of these facts.

The petitioner was divorced from her husband on the 10th day of December, 1871, and claimant produces an unconditional assignment from her husband of all his claims to the claim now in question, bearing date January 9, 1874.

In the checkered history of this claim comes next in order in its existence its introduction into the political campaign of 1878 as an evidence of the purpose of a political party to defraud the government for the benefit of the people in the insurrectionary districts, and this claim was given as a specimen.

Its next era finds a bill for its payment in both branches of the Forty-sixth Congress, and which is now under consideration.

It is not claimed that the claimant fails in making formal proof, which, independent of any consideration of law, public policy, and the rules of construing and weighing evidence, would establish a claim. But it is claimed that the circumstances of this case, its history, and varied and inconsistent statements concerning the same by the party in interest, tend to arouse such suspicions as require the facts to be closely scrutinized and thoroughly weighed.

In January, 1873, claimant files a petition in the claims commission, making claim for \$23,000, and alleging that she is the assignee of Jules J. Hebert. This claim and this assignment she swears to be true!

In 1874 she makes proof before the Committee on Claims in the United States Senate, as an excuse why she should not be barred by the statute limiting the time for filing claims, "that she was not aware until last year that such claims were being paid, and therefore she did not prepare her testimony and submit her case."

In 1878 she proves, for the first time, that she had no assignment from her husband until 1874; that she only meant in her claim, filed in 1873, to cover one-half of the property taken, which she thought belonged to her; that her husband stopped her prosecution of the claim before the Claims Commission; and he did not make claim, for he believed the officers who were in command when the property was taken were dead. She also proves that she knew General Paine was living, and learned from him in reference to the other officers when she came to Washington, and that date cannot well be assumed to be later than the date of swearing to and filing her petition in the Claims Commission, January 24, 1873. She also proves she was divorced from her husband December, 1871.

It is well to summarize this evidence more succinctly, that the contradictions may be more patent.

The first statement of items, upon her oath, alleged quantities and values, and that she held as assignee of her husband. Compare it with the second itemization of her claim. In the first, corn is put at \$1.50 per bushel; in the second, it is put at \$2.50 per bushel; but the amount in bushels remains the same. Five years afterward, she says, when making her second statement, that her first only was intended as a half interest. How do the figures square with that excuse for an increased bill? She charges for 8,000 bushels in each case, but makes her prices different, which conclusively shows that the half interest story is a subterfuge, and not a well considered one at that. But this is not all of that kind of thing. The first bill charges for 500 cords of wood at \$6; the second bill charges for 1,500 cords of wood at \$4.66 $\frac{2}{3}$ ; this does not conform to her explanation. The first bill charges for 100 chickens, \$100; and for 200 turkeys, \$400; while the second bill, which should be as much again, she now, owning the other half interest, itemizes merely 1 lot of poultry, \$100—charging \$400 less for the whole interest than she charged when she stated her half interest.

The first bill charges 30 hogs at \$10—\$300; the second one 30 hogs at \$30; making \$900 for pork. And for 5 milk cows, \$500; but when she becomes sole owner, under her subsequent pretense; the cows are itemized at \$375.

The next item charged in her bill before the Claims Commission is eight oxen, at \$50, making \$400. In her claim filed before the Senate Committee this item is entirely omitted, but there is substituted in place as follows: 20 head of beeves, \$500. In her first claim is found 5 horses at \$800. In her second claim, 1 pair of carriage horses, \$1,000; 3 riding horses, \$900. In her first claim is found 4 mules, at \$125, \$500. In her second claim, 4 mules, at \$300, \$1,200. In her first claim occurs "unknown quantity of lumber, consisting of staves, pickets, and posts, value estimated at \$5,000." While in her claim to Congress, we find "one lot of lumber, consisting of staves, heading, and pickets, \$10,000;" "for fencing on plantation, \$6,000."

Now, let it be remembered this second claim was filed in the Senate by Mrs. Hebert on the 10th day of March, 1874, but a short time more than a year after she made her claim to the commission, and he must have a most charitable mind who can reconcile the differences in the two claims, and attribute them either to failing memory or unconscious mistake.

But there is another view of the case on this same point which ought to remove all doubt as to the fraudulent character of the claim. This enlarged claim, filed in the Senate, was reported adversely, as we have seen, on the 1st day of February, 1875, and one point made against

the claimant in the adverse report was "that her husband was living at the time the supplies claimed for were taken from the plantation. No evidence was given to show in whom the legal title to that plantation was vested," &c.

This settles the question, that her bill was not enlarged, because her first claim was only intended to cover half, *i. e.*, her supposed interest, but shows that the enlarged bill was made before she pretended to the committee to have received an assignment from her husband, and stood upon her own claim of title and swore to it, and clearly disproves that pretence now presented as an afterthought, as this committee cannot help but believe. And it also proves beyond a question that another alleged fact in this case is a fraud, to wit, the assignment from the husband, because the point is distinctly made, as we have seen, by the committee who had the case under consideration, as to the title of the claimant, her husband being alive. Now, it is as clear as any conclusion may be, drawn from the well-known spring of action, self-interest, that if this claimant had been the assignee of her husband she would have produced the assignment. But she presumably undertook to swear it through on her own account, and being met with this objection, entered into a conspiracy with her late husband, who, so far as the government and its officers knew, had never pretended to have any claim, and took an assignment from him, and antedated it "January 9, 1874," so that it would appear to have been in her possession at a time prior to the report of the Senate Committee, February 1, 1875, and prior to her filing and swearing to her claim before the Senate, March 10, 1874.

Now, let us consider another excuse: She says, "her husband prevented the prosecution of the claim." When does this evidence come to light? March 21, 1878. Sworn to by the late husband; and the detailed history of the rise, course, and progress of this claim and of the action, not only of Congress, but of the committees of Congress, even to the vote by which reports were adopted in committee, by him in that affidavit, show that he is not a disinterested spectator, but rather that the divorced husband and wife have joined hands to accomplish a raid on the Treasury. He did not prevent her operations in the Senate; how could he prevent her proceeding in the Court of Claims? The parties were divorced in 1871, so that the woman was in nowise subject to his control, and the pretence of a former husband's restraint worse than sham.

There could be but one species of restraint used, and that might be used by one person as well as another, if possessed of the facts, *i. e.*, threatened exposure of the fraud and perjury, by means of which a claim is being palmed off upon the commission or upon Congress. But no duress of this kind seems to have been used to prevent the prosecution of this claim, but, on the contrary, the outraged husband, who swears that he forbid the prosecution of the claim in the Commission of Claims, executes an assignment to the wife, and antedates it, so as to cover her false swearing and fraud in 1874-'75. This does not look much like forbidding a prosecution.

Again, she swears and he swears he did not prosecute, because he supposed the officers who took the supplies were dead. It may be that somebody may be found who will believe that story, when it appears, if the evidence adduced in support of the claim be true, that there were a large number of witnesses cognizant of all the facts, who were well known to both husband and wife, and who could, as they now do, swear to an excuse for non-receipt of vouchers. No loyal or disloyal claimant ever fainted by the way when he had a just claim of nearly \$50,000 against the government, and abundant proof to support it.

But Mrs. Hebert, in her latest brief filed in this committee, says :

As Jules J. Hebert assigned to me all his rights and interest in said claim in 1874. I abandoned the Southern Claims Commission and filed a new bill in 1874 after said assignment, and as I had no attorney in my claim, I was afraid said Jules J. Hebert would come upon me for the same if I did not date the same after the assignment aforesaid.

Precisely what phase of the case this statement was made to excuse is not quite clear, but it is quite clear from it that she did not abandon the Commission of Claims except voluntarily, which is an admission directly in opposition to the former statement commented upon.

The case thus far has been considered upon the history of the case, and the acts, evidence, and conduct of the claimant and her husband, and it seems to the committee that if the evidence of the principals be untruthful, and that the claim is fraudulent in its inception and prosecution, there is but little need of looking further into the evidence. It is all or most of it of the class specified by the Senate committee in the first report cited, house servants and illiterate people, and people of a class who may be easily manipulated under the hand of a skillful claimant, or imposed upon by reading a paper to them as one thing when it in reality is entirely different ; a very common way, experience teaches, of imposing upon the ignorant and credulous.

The affidavit of Captain Alcott, of General Paine's command, is largely relied upon, but, when criticized, states but little and leaves the matter to inference ; he does not say he took any property from the claimant, or gave her or refused to give her any receipt ; nor does he state that he knew of any property being taken from her place. He only says in a general way that cord-wood and lumber were taken from her place. But a year or two previous to the making this affidavit this same officer wrote to the department at Washington, "that he knew the claimant in 1863 and was at her place, but she did not claim then to have lost anything by the Federal Army."

There is another circumstance in connection with there being no vouchers given or produced, which tends strongly against the claimant.

General Paine ordered vouchers given for all property taken. He was encamped near by the Hebert plantation, not temporarily and on the march, but as at a post for months. This property was taken by officers on detail to supply the troops, it is alleged, and it will appear that this detail was made at the early days of the encampment, to gather in supplies, and they were so gathered in. Now, if this woman furnished this large amount of supplies, and was promised vouchers, would she not have applied at once ? Who will believe that a small plantation was stripped of nearly \$50,000 worth of property, and a voucher was promised for it, and the claimant neglected to call for it from a headquarters in the neighborhood, and remaining there a large part of the winter ? It is asking too much from human credulity.

This point is sought to be covered by a vague statement that the troops went off suddenly in the morning and she had no opportunity. This might have been plausible had the troops taken supplies while on the march, but is too diaphanous for use where the facts are, as in this case, that there was an encampment and the troops staid a greater part of the winter, and no pretence the seizures were made presently before the removal. The evidence of General Paine throws light upon this part of the case. In a letter dated January 28, 1880, to the chairman of this committee, and filed with the papers, he says :

During the winter of 1862-'63 I was sent from Baton Rouge with my brigade, \* \* \* a squadron of cavalry, and one or two light batteries to a place called Indian Village on the Bayou Plaquemine, about nine miles distant from the village of Plaquemine \* \* \* I established my headquarters at Indian Village, but also established post

at the village of Plaquemine, and at a point about half-way between Plaquemine and Indian Village. One day I was returning from an inspection of these points, \* \* \* and at a point not far distant from this middle post was accosted by a gentleman at the roadside, apparently in feeble health, who said that his wife who was sitting on the porch of his house would be glad to see me. \* \* \* This lady (I suppose to have been Mrs. Hebert) said to me that her husband was sick and suffering for want of wheat flour; that the soldiers had taken her poultry, and that it would be a great favor to her if I could furnish her some flour. On my arrival in camp I sent her a barrel of flour. This was the first and last I ever heard of this lady, until I saw, many years afterwards, in the city of Washington, a lady whom I understand to be, but did not recognize, as the lady I saw that day.

Now I have no personal knowledge whether any property belonging to Mr. or Mrs. Hebert was or was not taken by my troops; but the facts which I am about to state will enable you to judge as well as I can as to the probabilities on the subject.

Our supplies furnished by the government at that time were abundant and excellent. A steamboat transported them to our camps. Immediately on my arrival at Indian Village I detailed a party, consisting of several commissioned officers and a considerable number of enlisted men, \* \* \* whose duty it was, as defined in the order making the detail, to make seizures of corn, sugar, molasses, forage, beef, mules, and other supplies of which the country was then full, and to give to the owners of all property seized written receipts therefor.

The party so detailed satisfactorily performed their duty, and no complaint ever reached me that they made a seizure without giving the voucher as my order required.

In view of the abundant supplies furnished by the government, and the large quantity seized by this party, I can imagine no temptation for the soldiers to incur the trouble of making seizures themselves of any of these articles, except poultry.

This statement fully corroborates the conclusions of the committee hereinbefore stated. But there is an additional chapter in the history of this claim, which the committee now introduce, in support of the view heretofore expressed by them on the merits of this claim, and the unscrupulous character of the claimant.

After this claim was reported favorably in the Forty-fifth Congress, the Treasury Department on the application of Mr. Harry White, of Pennsylvania, caused an investigation to be made into the merits of this claim, by sending an agent to the "locus in quo," and he reports a description of Hebert plantation, as follows:

The place contains four hundred and forty-three arpents. It has a front on Bayou Plaquemine of four arpents. The high or tillable land runs back a little less than ten arpents, when you come to low wet land, covered with willows, &c. In the years 1862 and 1863 several acres of this place were fenced in as a pasture, and then including the land on which the buildings were situate, and that fenced in as a yard, no more than twenty-five arpents could have been under cultivation in the years 1861-'62-'63.

Perhaps somebody may be found who will believe claimant and her witnesses when they swear to 8,000 barrels of corn, or 2,400 bushels as a crop off 25 acres of land.

But the agent of the government further reports as matter of history, that in the year 1862 this place was covered with water, and no crop of corn was made for that year. And to meet the suggestion that this 8,000 barrels of corn might have been the accumulation of years the agent reports, and in it he is sustained by the statement of all familiar with the climate, "that corn will not keep over eight or nine months in that climate, before it is entirely eaten up by worms and weevil."

The affidavit of John A. Dardone, one of the witnesses relied upon by the claimant, and who made an affidavit which accompanies the agent's report, says:

That he is a planter and owns the Crescent plantation, on Bayou Plaquemine; that during the war he knew the plantation belonging to Jules J. Hebert, formerly of said parish of Iberville. That the same is a small place, having about forty acres inclosed for cultivation. That being shown the list of articles claimed from the United States Government, as having been taken therefrom by Federal troops under General Paine, affiant considers the same erroneous in almost every particular, and notably in the amount of corn, wood, lumber, turkeys, and oxen claimed. Said amount being \* \* \* many times in excess of the amounts actually taken. Affiant had a large

place, and verily believes he lost more taken by the Federal forces than did Mr. Jules J. Hebert, and that his losses amounted to about \$4,500. That all things taken by General Paine were receipted for to him, and that his place as well as the place of Jules J. Hebert was all overflowed in 1862, and very little crops made thereon.

In connection with the statement of this witness, that the whole of land fenced did not exceed forty acres, attention is invited to the item of \$6,000 for fencing destroyed. What kind of fence must it have been?

The agent also returns the affidavit of Jules C. Neveaux, who says:

That he resided within a few hundred yards of the house and property owned and occupied by Jules J. Hebert; that he knew said Hebert, and was in his company and at his house almost daily during the spring of 1863, while the Federal troops were encamped at Indian Village, in their immediate neighborhood \* \* \*; that he knows to his positive knowledge that Jules J. Hebert sold his cord-wood to steam-boats, and lost none by its being taken away and used by the Federal troops in camp at Indian Village under command of General Halbert E. Paine \* \* \*; and that at the time alleged, in the spring of 1863, said Jules J. Hebert was not the owner of the lumber used by the Federal troops at Indian Village: \* \* \* but that said lumber came from Carbo's mill, and was the private property of a person now living in the city of New Orleans \* \* \*; that Hebert was the owner of only two mules in the spring of 1863, and these he sold to Mr. Durant \* \* \*; that Hebert owned two large horses and one small mare with colt, neither of which were captured by the Federal forces, but were sold by Jules J. Hebert \* \* \*; that it is not to his knowledge that Jules J. Hebert ever owned or had on his place any work-oxen; that he would have known it had he had them \* \* \*; that it is to his knowledge that the officers of General Paine's command did exchange two barrels of pork, some coffee, sugar, and such other necessities as his family required, for two young cows or heifers, several sheep, chickens, and a few turkeys; but in said exchange Jules J. Hebert expressed himself pleased as having made a good trade \* \* \*; that the only lumber on Hebert's place in the spring of 1863 was a few staves and headings piled up in his lot, and afterwards sold and shipped \* \* \*; that in the spring of 1862 the place was overflowed, and no crop of corn could have been made.

The agent further reports that the substantial facts stated in these affidavits are known and can be proven by a thousand people. The report of the Treasury agent is filed with the papers in the case. Without going any further into detail as to facts, the committee cite the statute of the United States, which makes the assignment to the present claimant absolutely void.

An act entitled "An act to prevent fraud upon the Treasury of the United States" (10 U. S. Stat., page 107) provides in its first section as follows:

That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment for any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. (See U. S. v. Gillis, 95 U. S., 407; Spofford v. Kirk, 97 U. S., 464.)

This is conclusive against the title of the claimant were the claim a just one. Again, the assignment was not executed, according to its terms, until January, 1874; and the time for filing claims in the Commission of Claims expired in March, 1874. Hence the claim was barred before assignment, and no equity could arise to a purchaser buying a stale or barred claim.

The committee, therefore, report adverse to this bill, and assign as specific reasons:

The claim is plainly a fraudulent one.

The claim is barred for want of prosecution in Commission of Claims if it were not fraudulent.

The assignment from Jules J. Hebert is invalid, and if a claim existed would not carry it to this claimant.



A. C. HAMMOND.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the memorial of Dr. Allan C. Hammond, late of Berkeley County, West Virginia, but now of Carroll County, Maryland, submit the following report:*

The memorialist represents—

That he was the owner of two large farms—one in Berkeley County, West Virginia, and the other in Morgan County—and was largely engaged in milling, distilling, and farming, and while so engaged, at the beginning of the late rebellion, the United States troops occupied his said farms and took from the same large quantities of hay, corn, wheat, wood, lumber, flour, bricks, horses, cattle, sheep, hogs, &c., and also a large quantity of whisky which was used for hospital purposes at Sandy Hook, Md., for the benefit of the sick troops of the United States Army at that point, and that for such stores he has received no compensation whatever, and refers for items and proofs to the several departments of the government, where his several claims, with the proofs supporting the same, will be found.

The papers to which reference is made in the memorial of claimant have been furnished this committee, and they find the claims are stated as follows:

Hospital stores taken from 1862 to 1865:	
50 barrels of whisky, containing 40 gallons each.....	\$4,000 00
Commissary stores, from 1861 to 1864, inclusive:	
6,500 pounds beef .....	585 00
500 pounds flour.....	4,000 00
5 hogs .....	100 00
1,500 pounds bacon .....	250 00
19 sheep .....	95 00
25 hogs .....	500 00
700 pounds beef .....	63 00
Quartermasters' stores taken during the years 1861, '62, '63, '64 .....	25,642 50
Quartermasters' stores taken during the years 1861 to 1864 .....	12,322 40
Rent of farms from 1862 to 1865.....	13,800 00
Rent of warehouse for one year, commencing December, 1862.....	400 00
Aggregating .....	62,757 90

This claim has been rejected by the departments which have had the same under consideration, *by reason of the disloyalty of the claimant*, without giving us the benefit of their official judgment on the weight of evidence as to the merits of claim irrespective of the status of the claimant. The committee being specially requested, have examined all the evidence, and do not rest their finding simply upon the rule that a claim which has once been fairly adjudicated ought not to be reopened.

The evidence shows the claimant originally to have been an opponent of secession in the Virginia convention, but he afterwards voted for secession and went with his State, withdrawing himself within the Confederate lines with his slaves and remaining absent from his home until the war closed.

He may be, and undoubtedly is, an estimable gentleman, who suffered much during the war, but in the opinion of this committee his was not the kind of loyalty that entitles him to come to Congress for a redress of the grievances which befell him by reason of his abandonment of his home "to go out of the Union with his State."

The very statement of his claim is vague and uncertain, and his proofs would not warrant us in passing it were he in fact a loyal Union man. There are no dates; but it would seem that, upon his return home, he learned the different commands that had been in his vicinity, and figured up his estimated losses and charged them generally to all the troops that had been in the neighborhood during the war.

The committee report adversely to the prayer of the memorial, and recommend it do lie upon the table.

JAMES B. AND RICHARD KITCHEN.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of James B. and Richard Kitchen, asking passage of a bill authorizing them to prosecute a claim for property taken from the steamer Shreveport, at Glasgow, Mo., in the Court of Claims, submit the following report:*

It appears from the papers filed, that C. R. Morehead & Co. shipped on board the steamboat Shreveport, Captain Baker, in September, 1864, a quantity of wool belonging to James B. and Richard Kitchen, the petitioners, worth \$12,961 at Leavenworth—consigned to Saint Louis; that on or about October 2, 1864, the steamer Shreveport was impressed by the military authorities of the United States under the following order:

[Special Order, No. 14.]

HEADQUARTERS POST OF GLASGOW, MO.,  
October 2, 1864.

Pursuant to instructions from Brigadier-General Fisk, commanding district North Missouri, the captain commanding steamer Shreveport will unload his cargo and remain at this place until further orders.

J. E. MAYO,  
Captain commanding post of Glasgow, Mo.

The wool was stored by Captain Baker in the warehouse of Lewis & Bro., in Glasgow, Mo. A few days after the warehouse was destroyed by fire. Is the government liable?

The petitioners allege the warehouse was fired by government soldiers, but there is no proof of the fact. They not being there, the statement so made has no weight, as it must from the very nature of the fact be purely hearsay.

The seizure of the boat, and the consequential result of causing the captain to unload are the only acts for which the government is responsible.

The government had clearly the right to do just what it did do, and the fire and damage are not the necessary nor the ordinary and usual results springing from the act, and therefore no liability on the part of the government attaches.

The committee therefore report adversely to the prayer of the petitioners and recommend the petition do lie upon the table.



WILLIAM W. JACKSON.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of William W. Jackson for compensation for money paid out in recruiting the First Mississippi Mounted Rifles, submit the following report:*

The petitioner alleges that he served in the late war as captain and commissary of subsistence on the staff of General S. A. Hurlburt, commanding the Department of the Tennessee; that in December, 1863, he was authorized to recruit and organize the First Mississippi Mounted Rifles, and did so, the rendezvous of the regiment being at Memphis; that in the course of enlisting and organizing this regiment he was put to great expense, to wit:

Subsisting 125 men from December 11, 1863, to January, 1864, 20 days, 2,500 rations, at 40 cents.....	\$1,000 00
Subsisting 160 men during January, 1864, 4,800 rations, at same rate.....	1 920 00
Subsisting 150 men during February, at same rate, 4,200 rations.....	1,680 00
Subsisting 140 men during March, April, and May, 92 days, 12,880 rations, same rate.....	5,755 20
Total .....	10,355 20

*The petition is not verified* and is made out as if a genuine claim, being precise in date, quantities, numbers, and amount.

Why it was not sworn to is quite manifest, for while the attorney who drew it did it as a claim agent, the beneficiary seems to have shrunk from swearing to it like a man, and for this reason: He was a commissary of subsistence stationed at Memphis, the headquarters of colored refugees, where they were enrolled and fed at the expense of the government and out of which motley crew this Falstaffian regiment was organized, or attempted to be organized. That a commissary had \$10,355.20 which he voluntarily paid out of his pocket for the use of these refugees to buy rations when he was the officer having charge of government rations, and issuing to them daily at the expense of the government, no one would believe if he swore to it, and hence his claim is unsupported by his own oath.

This claimant settled his account as commissary, and was credited under act of June 23, 1870, with \$2,428.09, leaving a balance still standing against him of \$81.47; and during the whole period which his accounts were suspended and being adjusted he made "no claim for recruiting or subsistence of troops, or rations or stores issued to refugees," as will be seen from a communication of the Third Auditor of the Treasury filed with the papers.

In 1874, nearly twelve years after he advanced the modest sum of \$10,355.20 from his pocket money, he filed or made a claim, not for the subsistence he now itemizes so accurately, but for \$2.50 per head bounty for enlisting, under the authority stated in his petition, of 1,500 men. This claim was made to the Adjutant-General of the Army.

The reply thereto, under date of March 31, 1874, is filed with the papers, and contains the following information, "*I have to inform you that the records have been examined and fail to show any men recruited in your name, nor does it appear that any men were brought or presented by you with view to the premium.*"

Four years after this rebuff the present claim was manufactured. It is one of the many claims that may be aptly termed bills of pillage, and the committee report adversely, and recommend the petition do lie on the table.



EDMUND WOLFF AND OTHERS.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of Edmund Wolff, A. W. Duke, Henry Kauffelt, George Kauffelt, Henry Lanius, George Harris, Rebecca Harris, Alex. J. Thomson, H. M. Thomson, Samuel Oberdorff, L. Conner, and Catharine J. Albright, for relief, submit the following report:*

The petition sets forth:

The petitioners in 1863 were residents of the borough of Wrightstown, in the State of Pennsylvania; that on the 28th day of June, 1863, the bridge across the Susquehanna, between the borough of Wrightstown and the borough of Columbia, in the county of Lancaster, in said State, was burned by the military order or authority of officers of the United States, emanating from Major-General D. N. Couch, commanding the Department of the Susquehanna; that the fire from the burning bridge was communicated to the private property there situate of your petitioners, which was also consumed, and thereby your petitioners suffered loss to a large amount in real estate, lumber, millinery and confectionery goods, hats, household and office furniture, cars, steam-engines, planing-machines, foundery apparatus, hollow ware, and other descriptions of property to them respectively belonging.

This petition is accompanied by schedules of the property destroyed, appraised, verified, and attested, amounting in the aggregate to \$45,558.53.

It appears from the proof filed that General Couch had made preparations for the destruction of the bridge whenever the proximity of rebel troops made it necessary, to prevent crossing the river, and protecting thereby Pennsylvania from further incursions of the enemy, with all of its destructive consequence; that the bridge was not fired until the troops of the enemy occupied Wrightstown; and unless the bridge was destroyed the State of Pennsylvania lay open to incursions.

The claimants have filed briefs citing general maxims and decisions of courts touching the liability of private parties where damages have ensued from negligent acts of omission or commission.

While these briefs are creditable to the diligence and subtlety of the counsel who prepared them, they fail to satisfy this committee that they are at all applicable to the principles involved in this case. And while we may concede the correctness of the rule laid down upon the facts in each case, we must decline to admit that they govern the liability in this case.

The borough of Wrightstown was the theater of military operations; the enemy were in possession; the destruction of the bridge was the result of an overruling military necessity; the damage resulting from its destruction was an accident of war inevitably and unavoidably incidental to its operations. In each case there is no obligation to make recompense.

The city of Moscow was burned to stay the course of the invader, but history fails to show that any amends or compensation was ever sought or received by private individuals.

When a great fire is in progress private property may be destroyed to stay the ravages of fire without subjecting the authority doing it to responsibility in damages.

The whole subject is discussed and authorities cited at length in *Russell v. The Mayor, &c.* (2 Denio, N. Y. Rep., 473); also in the courts of New Jersey (*American Print Works v. Laurence*, 3 Zabriskie, 591-615); and the same principle has been recognized and announced in Pennsylvania (*Respublica v. Sparhawk*, 1 Dallas, Pa., 362).

This principle is applicable where the injury is the direct, immediate and expected result of the act, which is much stronger than the case at bar, where the damages are merely consequential, and too remote to create a cause of action were the controversy between individuals, and the great principle of "overruling necessity," recognized both by the common law and international law, formed no factor in the problem. "*Salus populi suprema lex.*"

The hardship to the individual is grievous and heavy to be borne, but if the rule is to be established that the government is to make good all destruction of property and injury to life and health consequent upon war, we shall break down and destroy the government in our effort to care for the individual. Generosity is a rare virtue, but when its exercise must destroy the fountains from which supplies are asked, it is not only time to hesitate, but we must absolutely refuse to yield to appeals which would subordinate the judgment to the impulses of the heart.

The committee recommend the prayer of the petitioners be denied and that the memorial be laid upon the table.

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JOHN JACKSON.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

## REPORT:

[To accompany bill H. R. 1967.]

*The Committee on War Claims, to whom was referred the claim of John Jackson, late of Prairie County, Arkansas, respectfully report thereon :*

That the claimant alleges that in September, 1863, he owned and had in possession, in the town of Des Arc, in Prairie County, Arkansas, a printing establishment, containing a press and materials worth \$2,365.81, and at the same time and place a workshop, a warehouse, and various other properties; that at that time Maj. W. W. Wilshire, commanding United States troops, took said printing press and materials, and knocked to pieces said warehouse and workshop, and carried them to De Wells Bluff, to be used by the United States forces stationed at that post.

This case is somewhat peculiar; Major Wilshire testifies that Mr. Jackson was a thoroughly loyal man; that much of the property alleged to have been taken for the use of the United States Army was taken and used. Other witnesses testify to these facts also. Whether an application was made to the Quartermaster-General or other department for compensation does not appear. The papers are dated and sworn to in 1876, 1877, and 1878—all of them that bear upon the claim directly and were intended to support it.

In view of the fact that this claim was stale when first presented, so far as the papers show, and in view of the fact also that another tribunal had jurisdiction of the case, it is reported adversely.



D. W. GLASSIE ET AL.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

## REPORT:

*The Committee on War Claims, to whom was referred the petition of D. W. and Minnie H. Glassie and Joseph C. Nash, of Nashville, Tenn., respectfully report:*

That this claim was before the Commissioners of Claims and the facts set forth in the petition clearly gave jurisdiction over it to that tribunal. What disposition was made of it does not appear; but, under the rules adopted by this committee, it must be reported adversely.



JOSEPH TAGG.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the claim of Joseph Tagg, of Memphis, Tenn., respectfully report:*

That the claimant asks for pay for the use of and damage done to certain houses in Memphis, Tenn., taken by order of General Sherman for the use of the United States Army, in September, 1862. The rules of the committee preclude the favorable consideration of this case, and it is therefore reported adversely.



WILLIAM DADDS.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1895.]

*The Committee on War Claims, to whom was referred the petition of William Dadds, of Annapolis, Anne Arundel County, Maryland, respectfully report:*

The Committee on War Claims of the Forty-fifth Congress had this claim under consideration, and made the following report as to the facts, which is borne out by the evidence:

The petition in this case represents that the claimant, William Dadds, is a loyal citizen of Maryland, residing at Annapolis; that in the early part of the war of the rebellion he earned a livelihood by manual labor as a blacksmith and wheelwright, and was the owner in fee of a lot of ground situate on Calvert street, in Annapolis, whereon were located his workshop and dwelling-house. Some time in the month of April, 1861, General Benjamin F. Butler, being then in command of the United States troops at and near Annapolis, took entire possession of the Annapolis and Elkridge Railroad for military purposes. While thus in command, General Butler deemed it advisable to connect the said railroad with tide-water, and thus have a route to Washington from the North without passing through Baltimore. The extension of the railroad, as built by General Butler, passed over the lot of ground of the claimant, and within a few feet of his dwelling-house and blacksmith-shop. This necessitated the removal of claimant's family from the premises, which were entirely given up to military occupation. Besides great damage to his dwelling-house and the destruction of his workshop and out-houses, the claimant's trade as blacksmith and wheelwright was entirely broken up. The claimant represents himself as being a poor man, and that he was never able, after being driven from his old stand, to re-establish his trade as blacksmith, &c.

At the time of the taking, and at the instance of General Butler, the claimant, Dadds, had his losses appraised by three responsible business men of Annapolis, one a master bricklayer, another a master carpenter, and the third a property-owner, who gave it as their opinion that the damage sustained amounted to \$3,354. The original papers, showing this appraisement, were presented, with a petition for relief, to the Forty-second Congress, but pending their examination by the Committee on Claims, to whom the whole matter was referred, the papers were lost somewhere in the files of the House. Since 1861, two of the said three appraisers have died, the other—one Philip C. Clayton—makes oath that he recollects well the circumstances of the case, and that he then appraised the damages, as just stated, at \$3,354.

Accompanying the petition is the affidavit of many well-known citizens of Annapolis, who state that they are well acquainted with the claimant, and with the fact that his lot was taken for military purposes, and his shop and out-houses destroyed.

Also accompanying is a certificate of General Butler to the effect that the Annapolis and Elkridge Railroad was by his order extended through the city of Annapolis to tide-water, as claimed, for military purposes solely, and that by the extension private property was occupied for the use of the United States Army. The general states that while at this late day he does not recollect that William Dadds was one of those who so incurred loss, he yet distinctly remembers that there were on the line of the extension a blacksmith-shop and other buildings necessary to be removed. It is conclusively shown that this was the property of the claimant, for the damage to which compensation is now asked.

The committee recommended the appropriation of \$3,000 for the relief of the claimant.

This case appeals strongly to the sentiments of sympathy and benevolence, but, under the rules of law applicable to it, the claimant is not entitled to anything. The necessities of military operations bore severely on this claimant, as they did in many other cases. The committee reluctantly therefore come to the conclusion to report this claim unfavorably.

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W. A. CARR.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following.

## REPORT:

[To accompany bill H. R. 1962.]

*The Committee on War Claims, to whom was referred the claim of William A. Carr, of Missouri, respectfully report:*

That the claimant files a petition in which he asks consideration of his claim, as set forth in an alleged original petition and the proofs and exhibits accompanying the same on file in the office of the Clerk of the House. Inquiry develops that no such papers can be found, and the claim must therefore be reported adversely.

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CAPT. J. F. WESTON.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

## R E P O R T :

[To accompany bill H. R. 1942.]

*The Committee on War Claims, to whom was referred the claim of J. F. Weston, captain United States Army, respectfully report:*

The claimant was a captain in the United States Army, and on the 2d of September was ordered to proceed from cantonment on the Tongue River, Montana, to Helena, Mont., via Cow Island. He turned over two chests containing wearing apparel to the quartermaster, to be transported to his destination. These exceeded the quantity of baggage he had authority to take with him personally. It is alleged these chests were captured by Nez Percé Indians. He wants \$241.60.

One of the incidents of the claimant's profession has befallen him, and there seems to be no good reason why he should be compensated for the loss. Reported adversely.

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W. L. CAREY.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BAYNE, from the Committee on War Claims, submitted the following

## R E P O R T :

[To accompany bill H. R. 1943.]

*The Committee on War Claims, to whom was referred the claim of W. L. Carey, of Louisville, Ky., respectfully report :*

The claimant wants \$950 for whisky, brandy, tobacco, &c., alleged to have been burned on the steamer Duke, at Johnsonville, Tenn., in October, 1864, the United States troops having evacuated that town, and the boat, bar, and contents having been burned to prevent them from falling into the hands of the rebels.

Though the evidence does not clearly present the facts, it is quite likely that the claimant was "running" the bar on this steamer. The government, through its Commissary Department, supplied the wants of those engaged in the military and naval service, so far as articles of this kind were concerned, and there exists no obligation on its part to compensate for losses sustained by persons who ventured upon such enterprises under such circumstances. Reported adversely.





JOHN A. FIRTH.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 1966.]

*The Committee on War Claims, to whom was referred the claim of John A. Firth, of Des Arc, Ark., respectfully report:*

That the claimant files a petition in which he asks consideration of his claim, as set forth in an alleged original petition and the proofs and exhibit accompanying the same on file in the office of the Clerk of the House. Inquiry develops that no such papers can be found, and the claim must therefore be reported adversely.

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ADOLPH NIMITZ, TRUSTEE OF META NIMITZ.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1910.]

*The Committee on War Claims, to whom was referred the claim of Adolph Nimitz, trustee of Meta Nimitz, of Beaufort, Beaufort County, South Carolina, respectfully report:*

The claimant alleges that he and his wife were loyal citizens of the United States, and in 1861, when the rebellion broke out, he and his wife occupied certain real estate owned by his wife, and situated in Beaufort, Beaufort County, South Carolina; that one Captain Hamilton, in command of military forces belonging to the so called Confederate States, or South Carolina, compelled him and his wife, against their remonstrances, to abandon the property; that during their forced absence the real estate was sold for the payment of taxes to the United States, when, for the want of protection by the United States, the claimants were unable to pay the taxes. They, therefore, ask that the real estate be restored to them or that the value thereof be paid to them. In addition to the real estate, they allege they were compelled to abandon also their store, which contained a large quantity of goods and some household furniture. The aggregate claimed is \$13,620. They claim interest for fifteen years, amounting to \$10,215.

The first application made for relief was to the Treasury Department, in November, 1872. The papers in this case seem to have been prepared in 1877. An early application to the Treasury Department would have enabled the claimants to have redeemed their real estate. An early application to Congress would have obviated the characteristic of staleness which now forbids favorable consideration of the case. Reported adversely.



WILLIAM GREENSLADE.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1968.]

*The Committee on War Claims, to whom was referred the claim of William Greenslade, of Des Arc, Ark., respectfully report :*

That the claimant files a petition in which he asks consideration of his claim as set forth in an alleged original petition and the proofs and exhibits accompanying the same on file in the office of the Clerk of the House. Inquiry develops that no such papers can be found, and the claim must, therefore, be reported adversely.

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OWNERS OF THE STEAMBOAT FANNY BRANDEIS, BRAND-  
EIS & CRAWFORD.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bills H. R. 1945 and H. R. 2099.]

*The Committee on War Claims, to whom was referred bills H. R. 1945 and H. R. 2099, the first being presented in the name of the owners of the steamboat Fanny Brandeis and Brandeis & Crawford, and the second in the name of Brandeis & Crawford, all of Louisville, Ky., respectfully report:*

That these claims have been passed upon by a competent tribunal, as the following report of the Comptroller, Hon. J. M. Brodhead, conclusively shows:

In the matter of the claim of Brandeis & Crawford for certain corn alleged to have been delivered by them to the Quartermaster's Department, in March, 1865, at certain points on the Ohio River, and afterwards destroyed or damaged.

This claim has been pending since 1866. It was first before the Quartermaster's Department, where, on the 20th of January, 1869, an elaborate report was made by General Ekin, concurred in by Quartermaster-General Meigs, disallowing the claim. It was sent to the War Department with the report of General Ekin, and was there referred to the board of claims of that department. On the 2d of March, 1869, that board referred the claim to the Bureau of Military Justice for an opinion as to whether, upon the facts as disclosed by the papers, the lots of corn, or any of them, had at the time they were lost been delivered to the Quartermaster's Department, so as legally to make the United States responsible for their value. On the 6th of March, 1869, the Judge-Advocate-General replied "that there was no legal delivery," &c., "and that it would not be safe for the Secretary of War to order such payment."

On the 22d of April, 1869, the board of claims made a long report to the Secretary of War, stating the facts very fully, and intimating an opinion that a part of the corn was delivered; stating expressly that they were unable to concur fully in the opinion of the Judge-Advocate-General, and closing with a recommendation "that the papers be transmitted to the Attorney-General for his opinion upon the question involved."

On the 23d of April, the Secretary of War referred the case with all the papers to this office "for such action as the subject may seem to call for."

It is somewhat remarkable that in all the investigation made as the claim was passing through the several offices, the only allusion made to a claim of Brandeis & Crawford pending in the Court of Claims, was made in the report of General Ekin, in the following language: "The contract under which the claimants were delivering grain was filed in this office in support of another claim for corn now pending in the Court of Claims."

The case pending in the Court of Claims being thus designated as "another claim," seems not to have been examined at all; it certainly was not in this office while the claim was under investigation here. I caused the claim to be investigated, and on the 8th of May, 1869, addressed a letter to the Secretary of War stating the case as it then appeared from the papers, without any reference to the decision in the Court of Claims, concluding in the then aspect of the case that there was due to the claimants for corn lost at Curlew Tip and West Franklin \$2,178.19, and recommending that that sum be

paid. In this decision the Secretary concurred on the 15th of May, and returned the papers to this office with his concurrence indorsed, and on the 17th I sent the papers to the Third Auditor for the statement of an account in his office in conformity with that decision.

On the 31st of August, 1869, all the papers were returned from the office of the Third Auditor, accompanied by a report upon the entire merits of the case from the beginning, embracing a statement of what had been done in the Court of Claims, and presenting the case in a new aspect. From that report, and the papers that had been before the Court of Claims, it clearly appears that of the 300,000 bushels of corn which the claimants agreed to deliver to the Quartermaster's Department by their proposal of December 31, 1864, they delivered 260,772.16 bushels, leaving a balance of 39,227.4 bushels to be delivered.

The 260,772.16 bushels were received by the Quartermaster's Department and paid for without dispute, so far as appears by any testimony.

The 39,227.40 bushels were tendered and the quartermaster refused to receive them and suit was commenced in the Court of Claims for the balance due the claimants in consequence of the refusal to receive the latter quantity of corn, and judgment recovered against the United States and the money paid, so that the claimants received full payment according to their contract for the entire 300,000 bushels.

When the case came back to this office, and the attorneys of the claimants were apprised of the grounds on which the Third Auditor had based his report, they at once presented a written statement or argument commencing thus:

"Having agreed to deliver 300,000 bushels of corn, we allege—

"1st. That we delivered 261,000, about which there was no controversy, and we were paid in full.

"2d. That we were ready and offered to deliver the balance of 39,000 bushels, but the United States refused to receive it, and we were compelled to sell it for 80 cents per bushel, thereby losing the difference between that price and the contract price. To recover this difference we brought suit in the Court of Claims and obtained judgment."

Here is a frank acknowledgement that the government has paid in full for all the corn that it contracted to receive *without controversy*, as regards the first named quantity, and by judgment of a court of the United States for the last-named quantity.

The claimants proceed to state:

"3d. That in addition to the 261,000 bushels for which we were paid without controversy, and the 39,000 bushels which the government refused to receive, but has paid us the difference in price, we delivered to the United States 4,848 bushels at the places agreed upon, for which we have not been paid, except as to what we received for 266½ bushels sold in a damaged condition.

"There was a dispute about these lots of 4,848 bushels. The contractors alleged that it had been delivered; the quartermaster alleged that they had not been. Pending this controversy, the contractors substituted other corn for it, so that they should at all events fill their contract. But in doing this they did not waive their claim to be paid for the corn before delivered which had been in dispute, if it should appear that they were in the right in the controversy."

How is this statement to be reconciled with the facts?

The claimants, in the first place, admit that the first 261,000 bushels was received and paid for *without controversy*, and the remainder was paid for by judgment of the Court of Claims. This comprises the entire lot contracted for. Then they proceed to say that there was "a dispute about these lots of 4,848 bushels," &c., and "pending this controversy the contractors substituted other corn for it, so that they should at all events fill their contract."

What contract?

They acknowledge that *all the contract* of which we have any knowledge had been filled, partly *without controversy*, and partly by judgment of the Court of Claims. They do not pretend that they have any contract in relation to the delivery of 4,848 bushels and, further on in the same argument, admit that the 4,848 bushels mentioned was outside of the contract, when they say "It is an error to suppose that if a contractor delivers corn in excess of or outside of his contract that he cannot be paid for it."

At the request of the claimants the case was suffered to lie over until further evidence could be obtained by them. That evidence is now submitted, consisting of an affidavit of the claimants restating their case, and claiming an allowance on the very grounds assumed by their attorneys, as above quoted, and which is subject to the same criticism, and two affidavits—one of H. Verhoff, jr., stating that he had a contract with the United States to deliver corn, in the latter part of 1864; that Captain De Wolf, assistant quartermaster, appointed G. W. Carson inspector, to receive and inspect corn under his contract; that when he, Inspector Carson, reached Evansville, Ind., he was directed by the quartermaster there to also receive and inspect corn from Messrs. Brandeis & Crawford, under their contract with the government: that

he knows that in the months of February and March, 1865, Carson was inspector of grain for the government. He understands Carson is now dead.

Affidavit of W. H. Kenney states that he was employed by claimants to procure for them pay for corn alleged to be lost; that he had conversations with Brig. Gen. Robert Allen and Capt. D. O. De Wolf in regard to payment for said corn, and urged a settlement; that they both said in substance that they thought the government should pay for that corn, but declined to settle it themselves, and desired that the matter should be submitted to the authorities in Washington. This testimony presents no new facts, but is merely cumulative, and does not, in my opinion, add any strength to the claim.

To sum up the whole matter, as the case now appears to me, Brandeis & Crawford had a contract with the Quartermaster's Department to furnish 300,000 bushels of corn to the government; 260,772.16 were furnished and paid for. The remainder, 39,227.40, were tendered but not received, and sold by claimants at a loss. They sued the United States in the Court of Claims, and recovered the loss, and thus received pay for their 300,000 bushels. They had a lot of 4,848 bushels on hand, which they wanted to sell the United States in addition to the 300,000 bushels. The United States took a portion of it and a portion of it was destroyed. There is nothing to show and believed to be no pretense, that the government did not pay for all, even of this lot, that they received.

They now desire the government to pay for what was lost; for which, in my judgment, they have no claim whatever. I therefore withdraw and cancel my recommendation of May 16, 1869, for the statement of an account, and concur with your recommendation of August 31 that the claim be wholly disallowed.

J. M. BROADHEAD,  
*Comptroller.*

A. M. GANGEWER, Esq.,  
*Acting Third Auditor of the Treasury Department.*

TREASURY DEPARTMENT, SECOND COMPTROLLER'S OFFICE,  
*February 8, 1870.*

The committee adopt the foregoing report of the Comptroller as representing their opinion of these claims, and they are, therefore, reported adversely.





JAMES MILLER.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BAYNE, from the Committee on War Claims, submitted the following

## REPORT:

[To accompany bill H. R. 1933.]

*The Committee on War Claims, to whom was referred the claim of James Miller, of Bourbon County, Kentucky, respectfully report:*

The claimant alleges that in July and August, 1862, Quartermaster J. W. Campbell, of the Seventh Kentucky Cavalry, took from him in Bourbon County, Kentucky, for the use of the United States Army, corn, hay, wood, &c., worth \$1,570. The claim was presented to the Quartermaster-General, who had jurisdiction under the act of July 4, 1864, in the year 1873. It had been referred to Deputy Quartermaster-General Ekin in 1874, who recommended its rejection on account of the disloyalty of the claimant. The Quartermaster-General of the United States Army, on the 3d of December, 1876, rejected it for the same cause.

The claim falls within the ban of the rules adopted by the committee, and is therefore reported adversely.

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MARY T. DUNCAN.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1941.]

*The Committee on War Claims, to whom was referred the claim of Mrs. Mary T. Duncan, of Louisville, Ky., respectfully report:*

This claim is prosecuted by Blanton Duncan, as trustee of Mary T. Duncan. The claim is for \$11,130.35, alleged to have been collected by the United States as rent of property situated in the State of Kentucky, and confiscated by the government during the late war, and for repairs to a portion of said property. The petition does not aver the loyalty of the claimant, but states that she took no part in the war. She and her husband, the trustee, with their two children, aged five and nine years, went to South Carolina in 1861. The property used and damaged, and for which rents were collected by the government, was held in trust for the claimant, Mary T. Duncan, with remainder over to her children. In 1855 Blanton Duncan, the husband of the claimant and the father of the children, conveyed this property to Garnett Duncan, as trustee of the claimant. Garnett Duncan was the father of Blanton Duncan.

January 19, 1864, President Lincoln issued a passport to Mrs. Duncan, permitting her and her children to come through the lines. She soon after went to Europe. In May, 1864, Blanton Duncan left the South and went to Europe.

Some other property belonging to the claimant, subject to the same conditions, situated in Columbia, S. C., was used as military headquarters by General Ely, of the United States Army. It is alleged that the household furniture and the house were greatly damaged, and that nothing was paid by the United States for the use of them. Fifteen hundred dollars of the above-mentioned amount is asked for this use.

Judgment of confiscation was had against the property, but in November, 1869, the judgment was opened and the property was restored and vested in him as trustee.

It is claimed that in 1865 and 1866, after the war was ended, and while the claimant and her trustee were in Europe, \$5,947.02 of the total claimed was collected as rent, placed in the United States depository, and thence paid in the United States Treasury. The amounts subsequently collected, after deducting expenses, were paid to the trustee.

No part of the amount claimed can be sought for under the provisions of any law. Is there any reason why the claimant should have relief? It is quite evident that the claimant and her husband at first preferred to live under the ægis of the then promised Southern Confederacy. After three years' experience they came North, but soon took their departure

for Europe, where they remained until after the war was closed. It is submitted that under such circumstances, and in view of the fact that a portion of the rents collected has been paid and the property restored to the claimant, the government has dealt not only justly but generously with the claimant, and the claim is therefore reported adversely.



H. S. FRENCH.

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APRIL 8, 1890.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

## REPORT:

[To accompany bill H. R. 676.]

*The Committee on War Claims, to whom was referred the petition of Henry S. French, of Nashville, Tenn., respectfully report:*

The claimant alleges that on or about the 20th of September, 1864, at Jonesborough, Ga., the authorities of the United States seized 336 bales of cotton belonging to them; that 236 bales of this cotton were taken to Cincinnati, Ohio, and there sold in October or November, 1864, by W. P. Mellen, United States cotton agent, and the proceeds turned into the Treasury; that 100 bales were used by the surgeons of the Union Army immediately after the battle of Jonesborough, on the 31st of August and the 1st of September, 1864; that the claimant was a loyal Union citizen of Nashville, Tenn., and that he did not bring suit in the Court of Claims within the time allowed by law (two years from August 20, 1866) for the reason that he had been informed that his cotton had been destroyed. The total amount claimed is \$120,939.94.

The Committee on War Claims of the Forty-third Congress considered this claim, and the majority, relying on the testimony of General Le Duc, reported a bill authorizing the claimant to bring suit in the Court of Claims. The minority reported adversely, on the ground that the claimant omitted to go into the proper court within the time prescribed by law and ten years after the claim is alleged to have arisen and when the evidence for the government may be lost, without sufficiently showing any reason for not sooner urging it.

The claimant's testimony before the Commissioners of Claims, probably given during 1873, shows that he consulted General Sherman at Washington, D. C., about the cotton soon after the close of the war. The claimant was in Washington at different times, and there seems to be no good reason why he should not have known of the act of Congress under which he could have sought for compensation. He failed to testify in 1873, though severely questioned by the Commissioners of Claims, that he had been informed or believed that his cotton had been destroyed. He avers, however, December 8, 1877, that he had had such information, and used due diligence to learn whether it was true or not, and by reason thereof suffered the time for filing his claim to expire. His loyalty is probably established, but his acts regarding this cotton are inexplicable. Georgia seceded from the Union January 18, 1861. This cotton, as shown by the claimant's evidence, was purchased by his agents in that State in January, 1862. There is no evidence that he had a permit from United States authorities to purchase cotton within

the rebel lines. On the contrary, his evidence shows that he bought the cotton for purposes of speculation, and stored it with Butler & Peters at Jonesborough, Ga., intending that it should be kept by them until such time as he could get it.

For these reasons and others that might be given, if necessary, the claim is reported adversely.

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GEORGE W. TIDWELL.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of George W. Tidwell, of Smith County, Tennessee, respectfully report:*

That this claim has been three times examined and disallowed by the Commissary-General of Subsistence, who had jurisdiction under section 3, act of July 4, 1864. Under the rules, therefore, of this committee it is reported adversely.

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MARY L. SHIELDS.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BAYNE, from the Committee on War Claims, submitted the following

### REPORT:

*The Committee on War Claims, to whom was referred the claim of Mary L. Shields, of Memphis, Tenn., respectfully report :*

The claimant demanded \$12,840 for quartermaster's stores taken for the use of the United States Army, and the Quartermaster-General, under act of July 4, 1864, having jurisdiction, referred it to the Third Auditor of the Treasury with a recommendation that it should be settled for \$285.75.

The petitioner alleges she ought to have more. The principles of the rules of this committee forbid the consideration of the question, and the claim is therefore reported adversely.





JOHN T. OATES.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the petition of John T. Oates, of Holly Grove, Ark., respectfully report :*

That the claimant alleges that during the late war the United States forces under General Steele took from him a quantity of quartermaster stores at Holly Grove, Ark. ; that he presented his claim to the Southern Claims Commission, by which it was rejected for the reason, he alleges he was informed, that he had gone into bankruptcy after the close of the war and before the claim was filed.

Jurisdiction over the claim resided in the Southern Claims Commission, and, consequently, under rule 2 of the rules of the committee, it is adversely reported.



NANCY SEAWRIGHT.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BAYNE, from the Committee on War Claims, submitted the following

## REPORT:

*The Committee on War Claims, to whom was referred the claim of Nancy Seawright, of Memphis, Tenn., respectfully report:*

That the petition shows this claim was properly before the Commissioners of Claims, and was rejected. Under the rules of the committee, it must be reported adversely.



ROBERT TALLY.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the claim of Robert Tally, respectfully report:*

That this claim has been passed on and rejected by the Commissioners of Claims, who had jurisdiction, the claimant being a resident of Shelby County, Tennessee, who owned some horses, which he alleges were taken by the United States Army. The commissioners regarded the evidence as unsatisfactory, being either inferential or hearsay, and for that reason disallowed the claim. The rules of the committee preclude favorable consideration, and it is therefore reported adversely.





EDWARD STACK.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War-Claims, to whom was referred the claim of Edward Stack, of Shelby County, Tennessee, respectfully report :*

That the claimant shows by his petition that his claim was competently before a tribunal having jurisdiction, and was disallowed because, in the judgment of that tribunal—the Quartermaster-General of the United States Army—the loyalty of the petitioner was not sufficiently shown. Under the rules of the committee, therefore, this claim is reported adversely.



WILLIAM R. WEBBER ET AL.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

### REPORT:

*The Committee on War Claims, to whom was referred the claim of William R. Webber and Henrie E. Revell, executors, &c., of Shelby County, Tennessee, respectfully report:*

That this claim is shown by the petition to have been considered by a competent tribunal and rejected; and it therefore must be adversely reported, under the rules.

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LEWALLEN RHODES.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

## REPORT:

*The Committee on War Claims, to whom was referred the claim of Lewallen Rhodes, of Shelby County, Tennessee, respectfully report :*

That the petition shows that this claim was properly before a competent tribunal—the Quartermaster-General, United States Army—and was disallowed because it was not sufficiently established. It must, therefore, be adversely reported under the rules provided by the committee.

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MRS. ELIZABETH TOOF.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of Elizabeth Toof, respectfully report:*

That the claimant, Elizabeth Toof, during the war of the rebellion, resided part of the time in Memphis, Tenn., and part of the time in Illinois; that she claims that the United States Army took quartermaster's stores, amounting in value to \$2,448.50, from her while a resident of Tennessee. She presented her claim to the Commissioners of Claims, under the act of March 3, 1871, who rejected it on the ground that she had not shown her loyalty. She alleges that she presents with her petition additional evidence of her loyalty, and makes special reference to the fact that Mr. Benjamin, clerk of the Commissioners of Claims, notified her that the Commissioners had no power to reconsider a disallowed claim. The disallowance of her claim by the Commissioners and the additional evidence are the sole basis of her appeal to Congress, and, in view of the rules adopted by this committee, it must be refused.







PETER DOOLEY.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the claim of Peter Dooley, formerly of Cheshire, Berkshire County, Massachusetts, respectfully report:*

Peter Dooley entered the United States service like the brave man he doubtless was, and rose to the rank of captain. The exposure of active military life overcame his physical endurance, and before he had served two years, he was discharged for the disability unfortunately thus engendered. It is said misfortunes do not come singly. So it happened with Capt. Peter Dooley. He had scarcely begun to realize his liberty, and the convalescence that set in under the ameliorating conditions of peace, when the minions of conscription seized him, and demanded that he enter the military service of the United States as a high private, or pay the sum of \$300. He gave the alternative but brief consideration, for under such circumstances Peter Dooley would not hesitate long. He paid the \$300. Now he wants the United States to refund it to him.

If the committee did not think that Peter Dooley himself would patriotically refuse to take the money when he would discover the dangerous precedent his case would set, it would fain report in his favor. But selfishly desiring to share with him the honor of averting such a precedent, they report adversely.

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B. B. TAYLOR.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the bill (H. R. 873) for the relief of B. B. Taylor, of Murfreesborough, Tenn., respectfully report :*

That no evidence whatever is produced to sustain said claim, and it is therefore reported adversely.

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WILLIAM F. FRAZIER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

### REPORT:

*The Committee on War Claims, to whom was referred the claim of W. F. Frazier, of Washington, D. C., respectfully report :*

That the brief shows that his claim has been passed on by the Quartermaster-General; that every item of it fell within his jurisdiction; that the claim has been partly paid—doubtless all that was shown to be due. The claim is reported adversely.



JAMES SCOTT AND OTHERS.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom were referred the claims of James Scott, Dr. Jesse Barnes, W. B. Ewing's estate, Nathaniel Brown, John M. Winsted, Isaac R. Seaborn, A. J. Baker, Mrs. Martha A. Williams, William Glover, William Few, Wesley A. Niles, Mrs. Elizabeth J. Scholes, Mrs. Kessiah J. Allison, William M. Nolan, S. B. Frost, Jesse W. Williams, Wiley Hickerson, W. T. Alexander, James L. Baker, Mrs. Malinda J. Crockett, Abraham Weaver, Mrs. Sarah Feathers, Elkana Feathers, and James M. Thompson, all of Tennessee, for stores and supplies alleged to have been furnished by them, respectively, to the United States Army, respectfully report:*

That the petition, introduced into the Forty-fifth Congress as a bill, but withdrawn and referred to this committee April 23, 1879, itself states that the respective claims were "filed under the act of July 4, 1864, and heretofore not paid on various technicalities." This declaration suggests the absence of necessity for the further consideration of these claims. But if a little more labor in elucidating their character, whence they emanated, and how they come to be here will promise the remotest possibility of averting subsequent intrusions of them, the time and labor of the committee will be well spent in the undertaking. The suppression of plagues has baffled the powers of empires. If this committee can forever dispose of these and kindred claims, it will have achieved what the Khedive of Egypt undertook to do many centuries ago with a similar mischief and failed.

These claims originated, it is to be inferred, not in any series of coexistences and sequences that would naturally evolve them, but in the cerebellum and cerebrum of that indefatigable individual generically denominated as claim-agent. The claim-agent has a wonderful memory, great fluency of speech, and would not do what is wrong for anything. He can go into a community and convince the members thereof that on a certain day certain quartermaster's stores were taken from them for the use of the United States Army. He can remember what was taken from each particular individual, what it was worth, and that the individuals were, severally and collectively, loyal to the United States. Such encouragement is often appreciated. He then goes for all the tribunals which promise the vindication of the important principles he advocates. He appeals to them successively. The cases under consideration were all presented to the Quartermaster-General of the United States Army, and so accustomed was he to the rejection of this class of

claims that he often used printed circulars, merely inserting the name, to advise the invariable cause of the rejection.

Defeated, but not discouraged, the claim-agent, through the agency probably of his clients, gets the cases before Congress. Here he would like to vindicate the important principles that are at stake. Members of Congress, having a high regard for important principles, carefully ponder and consider the case. They finally conclude that the alleged technicalities were substantial obstacles to the favorable consideration of the claims, and they report them adversely. •

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REEDER B. SHEPPARD.

APRIL 8, 1830.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the claim of Reeder B. Sheppard, of Memphis, Tenn., respectfully report :*

The petition sets forth that the claimant presented his claim to the Southern Claims Commission for goods taken for use of United States Army, but the Commission found that the claimant's story, and a Special Order, No. 55, issued by General Roberts, show that he was "robbed by United States soldiers of the contents of his wagon; but such thieving is not taking for Army use."

Under the principle of law that the United States is not answerable for the torts of its agents, this claim must be reported adversely.



FRANCIS SIMMONS.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BAYNE, from the Committee on War Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 1944.]

*The Committee on War Claims, to whom was referred the claim of Francis Simmons, late of Pine Bluff, Ark., respectfully report :*

The claimant alleges that he was loyal to the United States. His loyalty is certified to, May 19, 1865, by Brig. Gen. Powell Clayton; May 25, 1865, by James F. Vaughn, late first lieutenant Fifth Kansas Cavalry, and by Thomas W. Scudder, late major Fifth Kansas Cavalry. He alleges that on September 1, 1863, by order of Major Scudder, 90,000 burnt brick, worth \$8 per thousand, amounting to \$720, were taken to provide quarters for United States troops and the "contrabands" encamped at Pine Bluff. He got in vouchers, but Major Scudder states that bricks were taken for the uses alleged. He applied to the Quartermaster-General, under act of July 4, 1864, who declined to consider the claim for want of jurisdiction. This application seems to have been made in 1877. The long delay in prosecuting this claim casts a shadow over it, which induces the committee to report adversely.



JAMES N. HUNTER.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. BRAGG, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of James N. Hunter, of Madison County, State of Tennessee, beg leave to report:*

That this is a claim for the sum of \$2,597 for horses, mules, pork, corn, and other property taken by soldiers of the United States Army during active hostilities in the late war, and in the insurrectionary State of Tennessee.

Claimant filed his petition and account before the Southern Claims Commission, offered proof in support of the items of his account, and, after a due hearing, the court disallowed the claim.

Your committee, after examining all the evidence filed in the case, fully concur in the opinion of the Commissioners in disallowing the claim. The evidence does not show that claimant was very loyal to the Union; he was no "adherent" to the cause. In fact, according to his own statement under oath, he "did not use any influence either way." He was a *philanthropic neutral*, who, after the battle of Shiloh, when asked if he was not sorry the Southern army was defeated, answered, "I was sorry for suffering humanity, that's all," and afterwards when he went to Mississippi to obtain the discharge of his son from the Confederate army, sought his discharge not because his son was in "disloyal service," but because "he was too young and weak to fight on either side."

Your committee think the case comes clearly within the prohibitory rule 1, clause 2, and recommend the rejection of petitioner's claim.



ALLEN T. CALLAHAN.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BRAGG, from the Committee on War Claims, submitted the following

### REPORT:

*The Committee on War Claims, to whom was referred the claim of Allen T. Callahan, of Virginia, submitted to Congress by the Commissioners of Claims (act March 3, 1871), beg leave to report:*

That they have examined the evidence filed in support of the claim, and find that the amount claimed is \$1,593.25 for cattle, corn, cord-wood, cabbage, hay, horses, lumber, potatoes, and poultry alleged to have been taken in November, 1862, and February, 1863, by United States troops from claimant (the owner of the property). It appears by the evidence offered by the claimant that all of the property was either destroyed or taken by soldiers during the armed occupation of the insurrectionary territory by Federal troops, and without authority of any employé or officer of the government, and comes within rule 4 adopted by this committee. It is further shown that the Commissioners of Claims rejected the claim on the ground that claimant availed himself of the benefit of the bankrupt law after the war, and if he had any claim it passed to his assignee in bankruptcy.

Your committee, having carefully examined the testimony, are of the opinion that the claim should be rejected, notwithstanding it may or may not have passed to the assignee.





ALLEN E. ANDERSON.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. BRAGG, from the Committee on War Claims, submitted the following

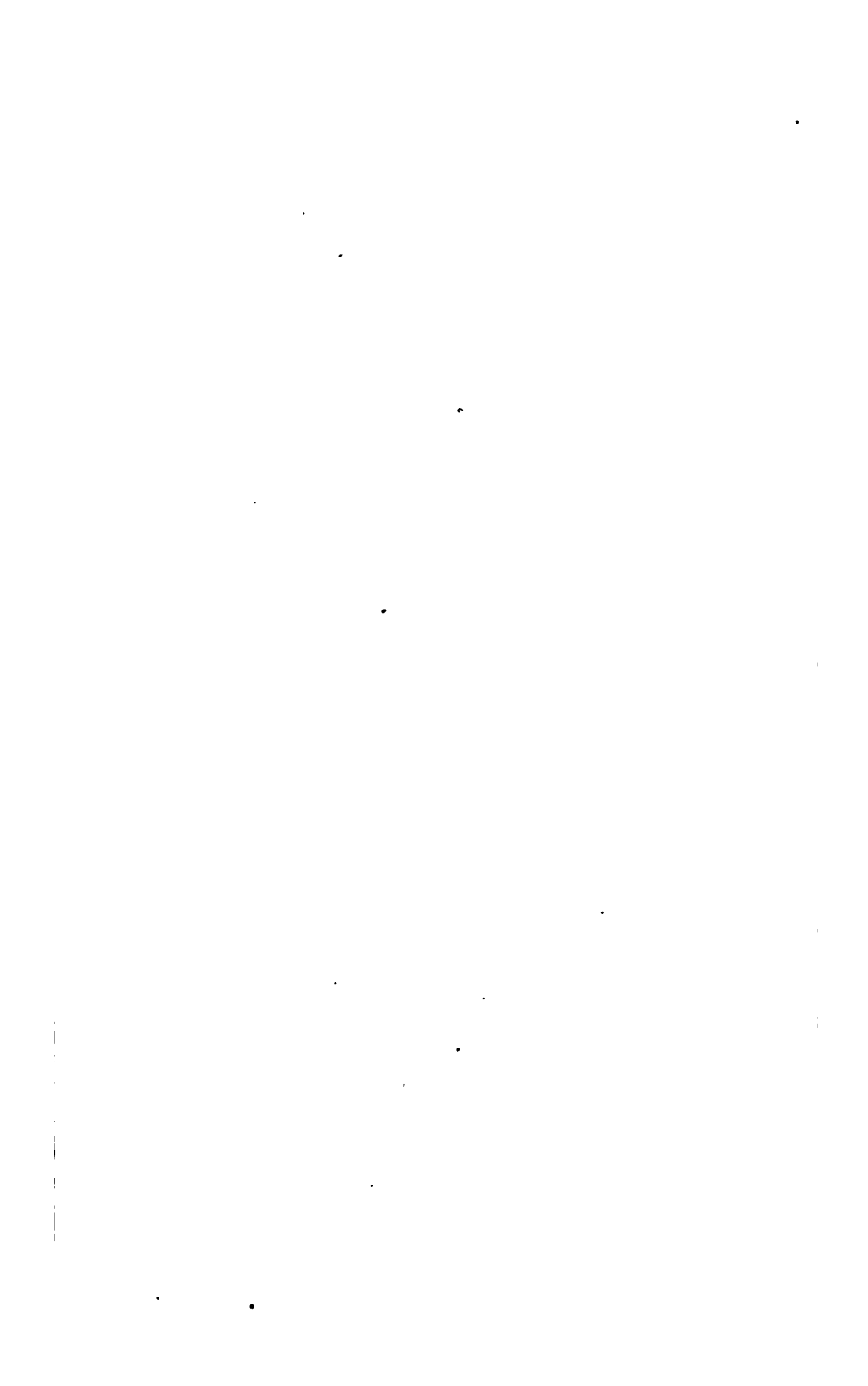
## REPORT:

*The Committee on War Claims, to whom was referred the petition of Allen E. Anderson, of the State of Mississippi, praying for the passage of an act for his relief, so as to authorize the Court of Claims to take jurisdiction of his claim and that he be permitted and empowered to prosecute the same before said court, beg leave to report:*

That his claim is for the sum of \$12,937.50, the alleged value of twenty-three bales of cotton taken from him in Amite County, Mississippi, in November, A. D. 1864, by United States forces under General Lee, while on a raid from Baton Rouge, La.

The petition states that the cotton was taken possession of by the United States forces while stationed at Liberty, Miss., and was thence taken to Baton Rouge. The evidence, however, shows that it was captured at Liberty, Miss., by the United States forces under General Lee, while on a raid, and carried off by said soldiers. There is no evidence that the government took possession of and sold it, or that the proceeds were covered into the Treasury of the United States. The petitioner states that he has not heretofore known that reclamation could have been had upon the United States Government, or that laws were or had been passed bearing upon his or similar cases, and that his claim has never heretofore been presented to Congress, or to any committee, or to any department of government, or to the Court of Claims, or that action has ever been had thereon. It is clear from the facts and from the petitioner's own statements that if he had any case there were other tribunals having jurisdiction to which he should have resorted for relief, and having failed to prosecute his claim within the time fixed by law, his action was barred, and his case comes within the prohibition of the third clause of rule 1 adopted by your committee. Therefore, your committee decline to grant the relief asked for.

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JOHN W. DOUGHERTY, JAMES M. ROBERTS, AND JAMES  
T. TAYLOR.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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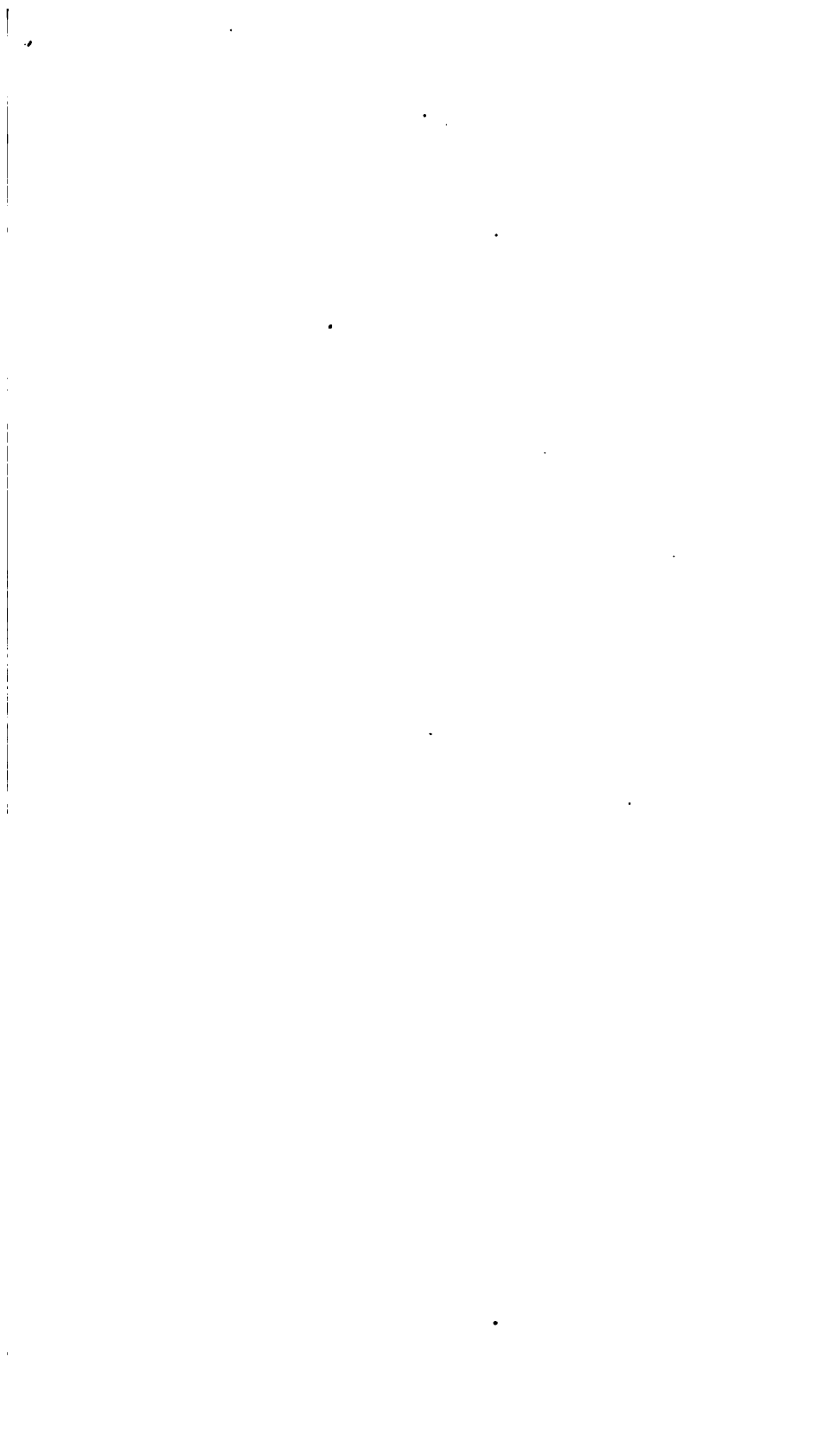
Mr. BRAGG, from the Committee on War Claims, submitted the following

## REPORT:

*The Committee on War Claims, to whom was referred the petition of John W. Dougherty, James M. Roberts, and James T. Taylor, citizens of the State of Maryland, praying indemnity for the loss of the schooner Chesapeake Trader while in the service of the United States during the late war between the United States and the so-called Confederate States, beg leave to report:*

That they have had the same under consideration and find that, on or about the 25th day of March, 1862, the petitioners chartered their schooner, the Chesapeake Trader, to the government to carry a cargo of cannon-ball from Washington City, D. C., to Fortress Monroe, petitioners assuming under the said charter the "marine risk," and the government the "war risk." The charter also stipulated that if the vessel was towed by the government, the voyage should be completed in two days. The schooner having received her cargo, was on the 27th March, 1862, taken in tow by the United States steamer Eagle, and ordered on her voyage, and while being thus towed on her voyage, at about 2 o'clock a. m. of the 29th March, 1862, arrived at Hampton Roads. "The morning was dark, the weather thick and stormy, and the harbor crowded with shipping." The captain of the schooner protested against entering, but the captain of United States steamer Eagle pressed on with her tow in the harbor, and ran his own vessel and the schooner on the bar, where they both grounded. The situation of the vessels was duly reported to the assistant quartermaster at Fortress Monroe, who, two or three days afterwards, sent off lighters and took out part of the cargo, and shortly afterward the schooner filled and became a total wreck; she was valued at \$3,000. The claimants promptly presented their claim to the accounting officers of the Treasury Department, who on the 5th day of May, 1869, rejected the same on the ground that the loss fell within the "marine risk" assumed by the owners in the charter-party referred to. The parties subsequently applied to the accounting officers for an allowance of general average contribution. The Third Auditor of the Treasury recognized this branch of the claim, but his decision was reversed by the Second Comptroller of the Treasury and confirmed by the Solicitor of the Treasury of the United States.

Your committee are of opinion that this claim having been twice examined, passed upon, and rejected by the proper officers of the Treasury Department (with authority and jurisdiction over the subject-matter), should not be allowed. They therefore recommend that the prayer of petitioners be not granted.



A. H. GARDNER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. ATHERTON, from the Committee on War Claims, submitted the following

## R E P O R T :

*The Committee on War Claims, to whom was referred the petition of A. H. Gardner, report:*

That A. H. Gardner, whose petition for property alleged to have been taken for the use of the Army (having been rejected by the Commissioners of Claims, and presented to Congress and referred to said committee), was adjudged a bankrupt in 1868, and received his discharge in bankruptcy in 1875. The committee therefore find that the claim passed to his assignees by virtue of the adjudication, for reasons more fully stated in their report upon the petition of James M. Barker, of Arkansas, and that said claim was rightfully rejected by the commission; and they ask to be discharged from its further consideration.



JAMES M. BARKER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the claim of James M. Barker, of Arkansas, submit the following report:*

On the 23d day of July, 1872, the claimant filed with the Commissioners of Claims a petition alleging that he had a claim against the United States for property taken and furnished for the use of the Army of the United States, consisting of mules, cattle, and horses, amounting in all in value to \$10,000, and asking the same be allowed him.

Evidence was subsequently taken showing fairly that he had remained, during the rebellion, loyally adherent to the Government of the United States, and that all or a considerable part of his claim was just, and was for property taken and used for the support of the Union Army. At least, for the purposes of this case, it is conceded that these facts appear *prima facie* by the evidence accompanying the petition. Afterwards the claim was summarily rejected by the Commissioners, for the reason that the claimant's name appeared on the list of bankrupts from Arkansas.

It does not appear when the claimant was adjudged a bankrupt, when he received a discharge in bankruptcy, or whether he ever did; so that if under any circumstances he could have been adjudged a bankrupt, and the claim he makes did not pass to the assignee, the order of the Commissioners would have been erroneous; but if the claim passed by operation of law, whether the petitioner was adjudged a bankrupt and received his discharge before the act of March 3, 1871, was passed or after, then the order of the Commissioners would be proper, provided they had jurisdiction to determine the title of the claimant to the fund.

Then, to take the case most strongly for the claimant, and suppose he became a bankrupt and received his discharge prior to March 3, A. D. 1871, did such a claim pass to his assignees, and should he or they be permitted to recover it?

It is urged that this claim prior to that enactment had no legal existence; that it was then of no value to the assignees, and could not be made available for the payment of debts; and further, that the enactment was in the nature of a donation, constituting, so to speak, both the cause of action as well as the machinery to enforce the remedy; that the claim was not assignable, by an act of the party, by reason of the express inhibition of the statute, and therefore would not pass by operation of law, and that the assignees could not make the personal affidavit of loyalty made necessary as a condition precedent to the recovery of the claim;

and that if such a claim was held to pass to the assignees, it simply deprived the assignor of that which could not be of the least value to his creditors.

On the other hand it is contended that the claim did pass to the assignees, and being for property owned by the citizen and taken by the government under circumstances that would between individuals constitute a cause of action, the act of 1871 did not make a donation, but simply afforded a remedy for the recovery of the pre-existing claim, and that whether any remedy existed or not to recover the claim, it still passed to the assignees by virtue of the adjudication and the assignment thereunder.

Now, which of these conflicting theories has received judicial sanction! The case of *Comegys et al. vs. Vasse* (1 Pet., 193) is the leading case, and substantially determines several of the propositions involved. The leading facts of that case, in short, were that Ambrose Vasse was an underwriter, and as such insured several vessels and their cargoes, about the beginning of the present century. These vessels were captured by Spanish ships and taken into Spanish ports, and the underwriter paid the insurance and took from the owners of the vessels and cargoes assignments of their claims for the property so captured and confiscated. Afterwards he became a bankrupt, was adjudged as such, and assignees of his estate were appointed, and he received his discharge in bankruptcy May 28, 1802, under the first bankrupt law of the United States. There was no statute and no treaty with Spain then, or for more than twenty years thereafter, that entitled Vasse or any other person to recover for the captures aforesaid, but in 1819 a treaty was negotiated with Spain, and ratified by the United States in 1821, providing indemnity for American citizens whose property had been so captured, and creating a commission of three persons who were required "*to receive, examine, and decide upon the amount and validity of all claims*" included within the descriptions therein mentioned. The commission reported that Spain should pay into the Treasury of the United States on account of the captures aforesaid, and the Government of Spain did pay on account thereof to such Treasury, the sum of \$8,846.14. The assignees in bankruptcy received that money from the Treasurer of the United States, and Vasse then filed in the circuit court of the United States for the district of Pennsylvania his bill in chancery against *Comegys et al.*, his assignees, to compel them to turn over the fund to him, and the circuit court so decreed, and the cause was then removed into the Supreme Court by writ of error.

It was said, in the opinion delivered in the Supreme Court, that it did not appear who were the persons presenting and litigating the claim before the board of commissioners under the treaty, nor who were the persons to whom, or for whose benefit, the award was made; but the court say the object of the treaty was to invest the commissioners with full power to receive, examine, and decide the amount and validity of the asserted claims upon Spain for damages and injuries, and that their decision within the *scope of their authority was conclusive and final*, and they were only authorized to determine whether the claim was to be allowed against Spain, and they had only authority to inquire whether it was an American claim, and were not empowered to determine the conflicting titles of such claimants; and they further determined that the claim of Vasse for indemnity passed to the assignees in bankruptcy, although twenty years had elapsed before the treaty was negotiated or ratified providing a remedy; and they also determined that, under the



language of the treaty creating the commission, their finding as to the ownership of the claim was not within the scope of their authority, and therefore that a court might determine the ownership of the claim and decide between adverse claimants, and they reversed the decision of the circuit court and decreed the fund to the defendants.

In *Frevull vs. Bache* (14 Pet., 95) the court construed similar language in a treaty with France, ratified July 4, 1831, creating a commission to receive and examine the claims of our citizens against France, and decided that the language did not authorize them to adjudicate as to the titles of adverse American claimants, and that therefore the courts might adjudicate the same, and that the adjudication thereon by the commission was not conclusive.

In *Judson vs. W. W. Corcoran* (17 How., 612) a like determination was arrived at in construing the language of a joint convention between the United States and the Republic of Mexico.

In *Erwin vs. The United States* (97 U. S., Repts., 393) it is determined that the claim of the owner for property captured by the Army of the United States, sold, and the proceeds covered into the United States Treasury constitutes property, even though the claim is barred by the statute of limitations and cannot be judicially enforced. It decides further that the act of February 26, 1853 (10 Stat., 170), making the assignment of claims against the United States void unless made after the allowance of the claim and in the presence of witnesses, applies only to voluntary assignments, and not to claims passing to heirs, legatees, or assignees in bankruptcy; in other words, to assignments by the parties, and not those where the title is transferred by operation of law.

On the first proposition the court say:

Demands against the government, if based on considerations which would be valid between individuals, such as services rendered or goods taken, are property, although there be no court to investigate and pass upon their validity, and their recognition and payment may depend on the caprice and favor of the legislature.

The case was brought by a claimant who had 382 bales of cotton taken by the United States military forces in December, 1864, and sold, and the proceeds paid into the Treasury. The claimant failed and became bankrupt in 1868, and in 1873 brought suit for the cotton above, in the Court of Claims. Among the questions in the case was this: Did this claim pass to the assignee? and the court held it did, and said that the present statute was broad enough to include every claim a party may have against the government for property taken belonging to him.

The case of *Phelps vs. McDonald* (99 U. S. Repts., 298) was a contest between the assignor and his assignee in bankruptcy for the recovery of a large sum of money paid by the United States for cotton burned in Arkansas and Louisiana, belonging to a British subject, by order of General Osborne. This payment was made under treaty of May 8, 1871, to satisfy this claim, prosecuted before the British-American commission, and amounted to \$197,190. McDonald was declared a bankrupt December 10, 1868, and received this discharge March 17, 1869, and more than two years before the ratification of the treaty affording him any remedy.

In discussing whether the claim had passed to the assignee, the court say:

It is but a short time since our government could be sued, and it can be done now only under the special circumstances defined by the statute. It is enough that the

right exists when the transfer is made, no matter how remote or uncertain the time of payment. The latter does not affect the former.

The court decreed this large sum of money to be paid to the assignees in bankruptcy.

In addition to these decisions it is to be observed that the act of March 3, 1871, does not assume to create claims. It simply recognizes their existence, and provides a tribunal for their adjudication and settlement.—(Report of Commissioners.)

If these claims were not legally considered property, they would not descend or pass to the personal representatives of the deceased claimants. But they have always been supposed to do so, and large sums have been paid to heirs and legatees on that theory.—(Same.)

There seems to be no element of donation in a case where the government simply pays for what it has taken from a citizen.

But, outside of the reason of the rule, the rule itself is too well settled by authority to be shaken; and the claim, in this case, whether the claimant became a bankrupt and received his discharge prior or subsequent to the act of March 3, 1871, passed to his assignee, and he has no title thereto.

The question, then, recurs as to the disposition to be made of the case. Shall it be returned to the Commission for further action or re-examination, or shall we report adversely to the prayer of the petition?

It has been suggested that the Commission exceeded its jurisdiction and power in attempting to determine the title of the claimant, and to reject the claim because no title is shown.

The language of the acts creating the commissions to determine the justice and validity of claims against Spain, France, and Mexico is somewhat similar to the language of the act creating the Commission, but the objects to be accomplished in the two cases are very different. These commissions determined in favor of the claims of American citizens against these governments, and the money representing the claims was to be paid into the Treasury of the United States; so it made no difference who represented the claim, all the commissions had to do was to determine whether the claim belonged to an American and the amount of the same.

But, in the case of the Commission of Southern Claims, they were to report on the loyalty of the claimant, and to do that they must first determine who owned the claim. They were to report to Congress who the claimants were, and upon their loyalty, and the amount coming to each, and Congress was expected to pass acts appropriating to these claimants, whose loyalty was proved, the amounts found due to each. It did not go into a common fund, where rival claimants might litigate as to whom it belonged, but went direct to the claimants named. Besides, it would be unreasonable to require the Commission to report upon claims that the claimants did not own. It would involve an unnecessary expense. It would have been like requiring the Spanish Commission to report upon the amount of a claim made before them by one not an American citizen. If it is true that the Commission should have reported to Congress upon the claim and loyalty of the claimant with a view to their action, and the money was to be appropriated, subject to be taken by legal proceedings, by the true owner, then he would be able to reach it, though disloyal, for no report is required of the Commission as to the new claimant.

But suppose the Commission has made a technical mistake, and that they should have reported, not on the question of title, but upon the

original validity of the claim and its amount, then what should we do in the premises? We all admit that the claimant has no title in fact, but that the claim has passed to his assignee. If we knew its exact amount, we could not and would not order its payment to the present claimant. We could not allow it to the assignee, for we do not know whether the creditors that he represents are loyal or disloyal, and besides they are not here asking anything. They have slept on their rights till they are barred, and the claim should never be paid to them. What good would result by remanding the claim for re-examination? If the amount was found, it could not be paid. So the remanding would simply be an expense to the people, and to the claimant it would be, in the classic language of a late Ohio governor, "a damned barren ideality."

The remanding of the case for re-examination and report could only be recommended on the theory that the claim belongs to somebody, and that upon being returned to the Commission they might allow the real party in interest, to wit, the assignee for the benefit of creditors, to be substituted for the assignor, and upon a report being made touching the loyalty of the creditors that the money could be authorized to be paid to them. I understand the Commission have determined they could not allow such a radical change of parties to be made. But should they do so, even if willing, and are such changes authorized by courts of justice in the ordinary course of legal proceeding? Amendments changing the names of parties are frequently allowed in courts of justice, but generally, if not always, under some statute authorizing them to be made, in the discretion of the court, in furtherance of justice.

But under what circumstances? When a change of ownership occurs pending the litigation the vendee may be substituted. If a suit is brought on an instrument by the holder, who has not procured the legal title to a chose in action by indorsement, the name of holder of the legal title may be allowed to be substituted. If an heir has inadvertently brought suit on an instrument, the legal title to which has descended to the personal representative, the administrator may be let in to prosecute it; and many like illustrations will suggest themselves. In these cases the parties are identical in interest, the claim when recovered goes to the same party, and the substitution is allowed simply to cure a technical defect in the plaintiff's title, and is in furtherance of justice.

But how is it with the case under our consideration? The assignor and assignees are rival claimants for the same fund. The assignor says, "This claim never did pass to my assignees. I now have my discharge in bankruptcy; the time has passed when my creditors can intervene in any way, and I propose to recover this claim, not for my creditors, but against them, and for myself." On failure of such a claim no court ever allowed a rival claimant, in its discretion, to be substituted. It would be simply the abuse of legal discretion to permit it. It would be permitting a new and independent suit, by a new and distinct party, to be engrafted upon an old stalk of litigation, and by attempting to give the proceeding unnatural continuity to defeat the statutes of repose. These parties have slept on their rights for many years.

The time that has elapsed makes it difficult to detect the frauds that have so often been successful in the prosecution of claims of this character, and public policy requires that the bar that the law has erected to protect the country from the swelling tide of fraudulent claims shall not be torn away.

Besides, could Congress confer on these new claimants the right now to prosecute these claims, and preserve its consistency without con-

ferring a like privilege on all claimants? We think it should be conferred on all or none; and that no good reason exists for giving it to one more than another. Besides, the assignees are not here asking for such a remedy, and certainly we should not confer it unless they do.

Upon a full consideration of this case and of every argument made before us in favor of the claimant, we recommend that the prayer of the petition be refused and the committee discharged from its further consideration.

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JEREMIAH F. DORRIS.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of Jeremiah F. Dorris, of Saline County, Missouri, having considered the same, respectfully report :*

That Jeremiah F. Dorris, then of Saline County, Missouri, on the 4th day of October, 1871, filed with the Commissioners of Claims his petition alleging (among other things) that, during the rebellion, live stock and other property of the value of \$5,857, then belonging to him at Carroll Parish, in the State of Louisiana, had been taken for the use of the Army of the United States, and asking to be paid the value thereof.

It afterwards appearing to said Commissioners that Dorris had availed himself of the benefit of the bankrupt act, and that the title to the claim had passed to his assignees, they rejected the claim, and the same was presented to Congress and referred to the Committee on War Claims.

For reasons fully stated in the report of the committee upon the claim of James M. Barker, of Arkansas, the committee find that the determination of the Commissioners was correct, and the committee ask to be discharged from the further consideration of the claim.



WILLIAM H. HUFF.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of William H. Huff, respectfully report:*

That on the 17th day of August, 1871, William H. Huff, of Etowah County, in the State of Alabama, filed his petition before the Commissioners of Claims, claiming to recover for certain commissary stores alleged to have been taken for the use of the Army of the United States, amounting in all in value to \$672.

The Commissioners rejected the claim because the claimant had availed himself of the benefit of the bankrupt law and the title to the claim had passed to his assignees.

The claim was then presented to Congress, and referred to the Committee on War Claims, who find that the Commission properly determined the claim (see report in case of James M. Barker, of Arkansas), and ask that the committee be discharged from the further consideration of the claim.





SAMUEL POINTER.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

Mr. ATHERTON, from the Committee on War Claims, submitted the following

R E P O R T :

*The Committee on War Claims, to whom was referred the petition of Samuel Pointer, of Lawrence County, Alabama, for payment for horses, mules, &c., alleged to have been taken for the use of the Army of the United States, respectfully report :*

That said Pointer, having filed his claim as aforesaid before the Commissioners of Claims, became bankrupt, and said claim, by operation of law, passed to his assignees, and said Commissioners rejected the claim, and he then filed a petition asking relief from the Congress of the United States.

The claimant has now no title to his alleged claim against the United States, and the same was properly rejected by the Commission. We therefore recommend that the prayer of the petitioner be denied.



JOHN BELCHER.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

*The Committee on War Claims, to whom was referred the petition of John Belcher, of Jefferson County, Alabama, respectfully report:*

That John Belcher, on the 12th day of April, 1872, filed with the Commissioners of Claims his petition seeking payment for domestic animals and farm products of the alleged value of \$312, alleged to have been taken for the use of the Army of the United States. During the pendency of his claim before the Commission, Belcher became bankrupt and the title of the claim passed to the assignees in bankruptcy. He made no offer to be substituted for the bankrupt, and the Commissioners rejected the claim because of the bankruptcy, and the claim was then presented to Congress and referred to this committee. The committee find the claim was properly rejected by the Commission, and that the claimant is not entitled to any relief. (See report in the case of James M. Barker, of Arkansas.) The committee therefore ask to be discharged from the further consideration of the claim.



JOHN ORSBORNE.

APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT :

*The Committee on War Claims, to whom was referred the petition of John Osborne, of Rapides Parish, Louisiana, respectfully report as follows :*

It appears from the proofs furnished that the claimant filed his claim before the Commissioners of Claims for adjudication and settlement ; and it was rejected for the reason that the claimant had availed himself of the benefits of the bankrupt law, and thereby deprived himself of all legal and equitable right to prosecute the same.

Your committee therefore report adversely to the petition.



A. FOLSOM.

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APRIL 8, 1880.—Laid on the table and ordered to be printed.

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Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

## R E P O R T:

*The Committee on War Claims, to whom was referred the petition of A. Folsom, respectfully report:*

That the statutes provide remedies for cases like this. We see no reason why the claimant has not pursued the ordinary remedy years ago. He says his affidavits were burned in the fire of 1861. Admitting the figures a mistake, that he intended 1871, no reason is given for the extraordinary delay of fourteen years. Stale claims, dependent upon testimony which could have been easily furnished years ago, if correct, and defeated easily then, but after the lapse of so many years are so hard to defend against, should receive but little consideration at the hands of the committee. The witnesses do not swear either to the articles or that they were of the value stated, but content themselves on the subject of value by saying they were valued at the prices named, some of the prices being extraordinarily high for such articles as named.

We reject the claim and ask to be discharged.

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